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UNITED STATES OF AMERICA.

THE LETTERS

OF

ALGERNON SIDNEY,

IN

DEFENCE OF CIVIL LIBERTY

AND

AGAINST THE ENCROACHMENTS

OF

MILITARY DESPOTISM,

WRITTEN BY AN EMINENT CITIZEN OF VIRGINIA, AND FIRST PUBLISHED IN THE RICHMOND ENQUIRER IN 1818–19.

TO WHICH ARE ADDED,

IN

AN APPENDIX,

The remarks of Mr. Ritchie as referred to by the author of "Algernon Sidney" in page 30 of this pamphlet.

WITH AN

INTRODUCTION

BY THE PRESENT PUBLISHER.

RICHMOND:

PRINTED AND PUBLISHED BY T. W. WHITE.

1830.

Benjamin Watkins Leigh

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PUBLISHER'S PREFACE.

A LARGE portion of the reading public in Virginia, will well recollect the strong sensation excited in the winter of 1818–19, by the appearance of the following letters under the signature of "Algernon Sydney." The uncommon perspicuity and elegance which distinguish them as literary compositions, no less than the ardent love of liberty which breathes through every line, attracted towards them an unusual degree of popular favour; and although confined to the fleeting columns of a newspaper, they were every where eagerly sought after, and in some instances carefully preserved as models of fine writing and sound patriotism. The Publisher believes that he cannot render a more acceptable service, than to present these invaluable letters to the public in a less perishable form, and in doing this, it is proper for him to say, that he has been so fortunate as to prevail upon their distinguished author to revise and correct some inaccuracies which were found in the original publication. It is also just to remark, that so far and no further, has that gentleman aided or participated in the present edition. It issues from the press on the sole responsibility and by the exclusive agency of the publisher.

It may be asked why send forth these letters at this late period, when the occasion which originally produced them has passed away, and the individual whose conduct they so eloquently arraigned, has not only been tried at the bar of public opinion and acquitted, but has actually received the highest reward in the gift of the American people. To this it may be replied in the first place, that *Truth is eternal and unchangeable*, and though for a time it may be despised,—trodden down and vanquished, it is contrary to the *Divine Justice* to suppose it can ever be finally annihilated. In other ages and countries it has survived innumerable perils,—defied the combinations of fraud and tyranny, the terrors

of the rack and gibbet, and has even triumphed over the flames and tortures of the Inquisition. It is unreasonable therefore to imagine, that in this free country, and at this enlightened day, it can sink the victim of a momentary popular delusion. *Error and Crime*, through all their artful disguises,—by whatever names miscalled,—are still *error and crime*. Neither brilliant success—nor prosperous fortune, can sanctify or redeem them.

In the second place, the letters of "Algernon Sydney," like those of the immortal Junius, do not exclusively depend for their excellence upon the particular transactions they record. Like those of the great English unknown, they will be preserved as specimens of noble simplicity in style—as well as powerful and unanswerable reasoning. They deserve to be considered as chaste models in diction, which the rising generations will delight to study, and which if successfully imitated will teach them to shun the abounding errors of false ornament and extravagance. The Publisher would be restrained by a sense of his own incompetency alone, from praising these admirable productions as they deserve. Fortunately for him the task is as useless, as it would be difficult. It would be like "gilding refined gold, painting the lily, or throwing a perfume on the violet."

From other considerations, the present cannot be regarded as an unsuitable time for ushering this work from the press. The Publisher was conscientiously opposed to the election of General Jackson, and he thinks he has seen enough in the first year of his administration to justify fully the estimate made of his character in 1819.—At that time both "Algernon Sydney" and the Editor of the Richmond Enquirer, characterised his military career as evincing a profound contempt for public opinion,—as displaying a temper at once vindictive and tyrannical. Let any man who really feels that he loves his country more than a particular party, seriously consider and decide what has been the President's *civil career?* To use the language of an eloquent member of the United States Senate, "Is not the press, that once proud "palladium of liberty, subsidized, and bought, and sunk to

"a mere party engine, under the present administration?" Was such a thing ever heard or conceived of before under any other President, as the appointment of forty-nine editors of newspapers, some of them to lucrative offices, and some with the permission (and no doubt express understanding) that their editorial services were still to be continued. Did it ever before enter into the mind of an American to imagine that so bold an effort would be made by the Chief Magistrate to enslave the Press, and thereby corrupt the very fountain of public liberty? Did it ever happen that the bribe of governmental patronage was so openly and fearlessly offered to that class of society whose high and peculiar privilege it is, to mould and direct public sentiment? Are not the strongest temptations now held out to all those editors who will justify the present administration in every thing, right or wrong,—whilst on the other hand does not certain proscription await them who shall presume to question the pure and upright morality of the President and his Cabinet. If these same servile editors should perchance by State patronage, or other causes, be independent of Federal office, have they not children and connexions to be provided for whensoever the smile of Presidential favour shall be solicited!

Again—was it ever before in this free country believed that a man could not without the fear of punishment express his opinion freely of public men and measures. Yet what is the fact? No holder of a federal office can dare to do it, without being in continual danger, and no private man who exercises the right of judgment, if that judgment is adverse to our present rulers, can ever hope for official favour or preferment....He is as effectually excluded from the honors and emoluments of his country as if born in a foreign land or stigmatised for some odious crime. The ties and sympathies which bind him to his government are dissolved, and he finds himself an outcast and an alien in the midst of his brethren and countrymen. Has President Jackson ever appointed to office a single man who opposed his election? On the contrary have not hundreds been proscribed and turned out as unworthy of employment, for no other cause than an honest

difference of opinion, and in numerous instances without ever expressing that opinion at the polls. How hollow and ridiculous is the pretext, that this violent course of proscription has been required by the principle of rotation in office. That, like all other principles, ought to be general and impartial in its application,—yet we find it has been convenient only to extend rotation in office, to all such incumbents as were opposed to the election of President Jackson. It is no justification or excuse that some gentlemen opposed to the administration have also been permitted to retain their appointments. In all such instances, it is perfectly manifest that the government would have lost more than it could possibly gain by a contrary policy—and the fact furnishes additional evidence that the arbitrary will of the President and not the welfare of the nation is the rule by which he has been governed.

What else do these melancholy facts establish than this—that the offices and employments of the United States are distributed not for national and legitimate purposes, but to reward the greedy and corrupt adherents of a successful candidate? The precedent, however mischievous and fatal, in having been once established, will in all probability be followed in future times,—and the Presidential struggle will hereafter more resemble a furious conflict between rival chiefs, than the peaceful election of the first magistrate of a free people.

Another and still more serious cause of alarm is to be found in the organized machinery, by which the present administration and its numerous satellites are artfully seeking to prolong their power. Availing themselves of the magic of names, and the argument of epithets, so powerful in human affairs, they unblushingly pretend to be the exclusive champions of democracy and popular rights, and represent their opponents as the friends of Aristocracy and Federalism. General Jackson and his adherents, it is said, are friends of State Rights and Limited Construction,—whilst those who oppose him are denounced as the advocates of Consolidated Government and even of Monarchy. Nothing is necessary

but a candid attention to facts to refute these unfounded assertions. If we look to particular States, (Pennsylvania and New-York for example) we find that the true test of real Jackson democracy is attachment to those very measures, that in Virginia and South-Carolina are regarded as gross violations of the federal compact. Whilst a Pennsylvania democrat would be thought absolutely mad to deny to the general government the power of making roads and canals, or of protecting domestic manufactures—to maintain on this side of the Potomac the constitutionality of those measures, is stigmatised as the very essence of federalism. It is impossible therefore to determine precisely the creed of a real Jackson republican. At the distance of a few geographical degrees, the principles of the party differ as widely as the poles, and the only one particular in which they unanimously agree, is a blind devotion to their idol.

If we look to the President's appointments as a genuine test of his democracy—how can we reconcile the fact, that some of the most distinguished federalists of the old school have received the highest and most lucrative offices in the gift of the government. Some even suspected of being leagued in the conspiracy of Burr, or who rejoiced in the defection of Hull, have found in their new born faith a complete redemption from political sin.

When these barefaced attempts are made to impose upon the American people, let it not be said that President Jackson has been finally tried and acquitted, by an impartial world. It yet remains for posterity, that severe but equitable tribunal, to pronounce upon his actions, and howsoever lightly his demerits may be now regarded, a severe sentence of retribution will be awarded.

It is right therefore that the future historian should be provided with all the materials necessary to illustrate the character of a man whose elevation to the office he fills, is one of the most wonderful events of modern times. The letters of "Algernon Sydney" will throw much light on the early chapters of his history, and the first year of his mal-

administration inscribe in dismal characters a few more pages. What the final catastrophe will be,—remains to be seen.

If the publisher had been governed by party feeling he would probably have desired to suppress the severe and eloquent attack on Mr. Adams, then Secretary of State. Much however as he respects the talents and virtues of that persecuted statesman, he values still more the cause of truth and justice. Perhaps Mr. Adams's defence of General Jackson, though elaborate and ingenious, was the most unfortunate act of his whole political life,—and it is a circumstance of profound regret to his friends, that he should have employed his great and acknowledged genius, to throw a lustre around deeds of darkness and crime. That famed vindication was perhaps the groundwork of General Jackson's present elevation,—and it would almost seem in the order of Providence to be wise and just, that the man who in 1818 was screened from deserved punishment, should in 1828 turn upon and attempt to destroy his benefactor.

The Publisher makes no apology for the editorial article selected from the Richmond Enquirer and published in the Appendix. It is designed to show the state of public feeling in Virginia at the time it was written. The Enquirer then, like a faithful sentinel on the watch-tower, warned his country against the insidious approaches of military tyranny—and the voice of that country, almost every where echoed the sentiment. The note of its editor has changed it is true ;—in his view, the man who was capable of such high handed deeds is now "transformed into an angel of light." For those very acts which would have sunk Mr. Adams to the nethermost pit—the incense of adulation and praise is constantly ascending to the seat of power. Whether this be the true interpretation of public opinion as it now exists or will shortly be, is extremely doubtful. Time at least will demonstrate whether the spirit of freedom is entirely broken down, or whether our countrymen are still attached to the genuine principles of free government.

From the Richmond Enquirer of Dec. 22, 1818.

GENERAL JACKSON.

TO THE EDITOR OF THE ENQUIRER.

The violence that has marked the character and conduct of General Jackson throughout the whole course of his service, the acquiescence of the Executive in all, and its positive approbation of some of the very worst of his measures, and, more than all, the unaccountable apathy of the public at large in regard to the whole subject, have filled my mind with amazement, indignation and alarm.

Example and precedent are of mighty and wonderful influence in the affairs of men. It is true in the practice of all governments, though it be false in the theory of ours, that whatever has been once done, and allowed, may be lawfully repeated. No services, therefore, however meritorious, nor station however exalted, should exempt from punishment, much more from inquiry, those who perpetrate or those who permit an open violation of the constitution. An impartial review of the history of General Jackson's official life, will exhibit a succession of offences against all the rules of military discipline, against the constitution of the United States and of such of the states as have been the scene of his operations, and against the laws of nature and nations. On his part, we shall find no justification, no apology, no contrition; and on the part of the federal Executive, no act nor effort to maintain its own dignity, to enforce its just authority, or to vindicate the violated majesty of the laws.

In the very first service in which we saw this officer employed during the late war, he set at nought the authority of the war department and the rules and articles of war. Hav-

ing early tendered his services to government, with 2,500 Tennessee volunteers, he was ordered to conduct them to the lower Mississippi, to assist the regular force there, in repelling a descent of the enemy upon Louisiana, then (we never knew why) seriously apprehended. He marched with his usual promptitude and celerity, and early in January 1813, encamped at his appointed station in the Mississippi territory. Here, shortly afterwards, as the historian of his life informs us, "The clouds of war having blown over in that quarter, "he received an order from the secretary of war, directing "him on the receipt thereof, to dismiss those under his com- "mand from service, and to take measures for delivering "over every article of public property in his possession to "General Wilkinson." Without the least hesitation, he disobeyed these orders; seized upon the public stores, and all the transportation on which he could lay his hands, in spite of the quartermaster and of General Wilkinson; and reconducted his army in a body to Tennessee. Instead of making a modest representation of his motives to the war department, and throwing himself on the indulgence of government for pardon, he announced the determination he had taken to disregard its orders in the haughtiest terms; and aggravated the act of disobedience with the grossest insult to the secretary, General Armstrong, and in effect to the whole government—"He expressed the astonishment he felt, "that such orders should have originated with the famous "author of *the Newburg Letters*, the then redoubted advo- "cate for soldiers' rights."* I mean not to exaggerate his fault. I confess, that in my own opinion, he was actuated by the generous motive of affection for his volunteers. And as to General Armstrong, it may have been a providential dispensation of justice, that he should be reproached in his old age with the unatoned crime of his youth, and made to feel in his own person the evil of arms unrestrained by subordination. But deliberate disobedience of orders, wilful

* *See Reid's Life of Gen. Jackson, p.* 19, 20.

disrespect towards superiors, and especially towards government, are all crimes in a military officer of the first magnitude. General Jackson was guilty of them all. I appeal to military men, whether the impunity of such offences be not the destruction of discipline? Whether it was ever known before, that such an offender escaped without punishment of any kind, without trial, without inquiry at least? The humiliation of the government and General Jackson's victory were complete. Thenceforth, a new relation was established between them; of which, as we shall see in the sequel, both parties were sensible, and have borne themselves accordingly.

I do not intend to follow him through the war he conducted against the Creeks in 1813–14. I mention the bloody massacre of Talapoose, only to express my grief for it, shame and abhorrence. In vain has his too partial biographer pleaded the law of retaliation in his defence; in vain alleged, that the Indians obstinately persisted in hopeless resistance, and would neither ask nor accept quarter; in vain protested that his general sent to invite them to surrender and spare the effusion of their own blood, and that they fired upon his flag: the historian admits, that the general well knew they had ample reason for their desperation; and the general himself tells the world, in his official dispatch, that, after the pursuit, or rather the hunt (literally, with fire and sword) and the carnage, had continued till darkness covered and concealed his miserable victims; after he was apprised, that of their thousand warriors not half an hundred remained; after a whole night to cool and reflect, *on the next morning*, the hunt and the slaughter "*were resumed, and sixteen,*" (all that could be found) "*of the enemy slain, who had concealed themselves under the banks.*"* Yet I will not urge that as a peculiar reproach against General Jackson, which I rather regard as a stain upon my country. History will re-

* *Life of Gen. Jackson, p.* 150–154. *Niles's Register, VI.* 146–49.

cord, that his bloody deeds were received by his countrymen with general applause, while the clemency of Col. Pearson was regarded with contempt and resentment. Truly, American avarice of Indian lands is equal to Spanish avarice of Indian gold.

I am sorry to say any thing that may seem to affect General Jackson's private character: but I must remark, that the grant of lands he afterwards obtained from these same Creeks (the willing tribute of gratitude, no doubt, for his tender mercies towards their name and race) was contrary to the known policy of the government. It was not the Executive, however, but the Senate, that refused to give it sanction.

I have here to mention a fact, which, striking as it is, and decisive of the character of the man, is hardly remembered, if it be not absolutely forgotten, except by a few curious observers. General Jackson's recent seizure of St. Marks and Pensacola, is not the first instance in which he has, of his own independent sovereign authority, declared and waged war against a nation with which his country was at peace. In November 1814, he took Pensacola by storm, though he confessedly knew at the time, that the act was contrary to the views and policy of the government.* The Executive, whose commission he abused, Congress, whose powers he usurped, looked on in profound silence. As to the American people, they have ever seemed to imagine it impossible, that an invasion of the rights of Spain could be accompanied with an invasion of their own.

Turn your eyes now to the principal scene of General Jackson's glory: happy, if it were not also the scene of unrestrained violence and tyranny. I would detract nothing from the real merit he displayed in his memorable defence of New-Orleans in 1814–15. I would not, if the occasion were proper, enter into any criticism of his military operations; or attempt to ascribe to fortune, any portion of the glory which skill and valor claim. That his success was complete,

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* *Life of Jackson, p.* 221, 230.

that his victory was no less beneficial in its consequences than brilliant in its achievement; all this I gladly acknowledge. But to that extravagance of national gratitude, which has manifested itself in a tame surrender of the constitution, though but for a time, and of the civil liberty of any portion of the good people of this union, how distant and small soever, I never will assent, while I have breath to make my protest heard.

General Jackson's first step, after his arrival at New-Orleans, was to propose to the legislature of Louisiana, then in session, a suspension of the *habeas corpus;* induced, it is said, to recommend that odious measure, by representations made to him by Governor Claiborne, of the disaffection of the people. If the Governor's apprehensions were not inspired by the General himself, the General knew, as well as any body, what reliance was to be placed on the Governor's judgment. The legislature knew its constituents as well as the Governor, and better than the General: that body certainly was not disaffected: it was, doubtless, the best judge, whether the proposed measure was necessary or even expedient; and it was deliberating, we are told, "with great caution" (as well it might) "upon its right and power to adopt such a measure," when General Jackson not only suspended the *habeas corpus*, but *proclaimed martial law.* Forthwith the city of New-Orleans and its environs were converted into a camp, and put under a rigorous military police.*

He rests his defence, of course, upon the tyrant's plea, *necessity.* That such a measure was necessary, I have the authority of the Louisiana legislature for doubting; and General Jackson has Governor Claiborne's word for believing. If all that Governor Claiborne told him were proved to be true, I should still deny the necessity. During the arduous struggle of the revolution, martial law was never once proclaimed. Amidst the distraction of a civil war, when whole regiments of refugees and tories were imbodied in the ser-

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* *Life of Jackson. p.* 275, 278.

vice of the enemy, and their friends and kindred dispersed over the country, General Washington, though for a time clothed with almost dictatorial powers, never proclaimed martial law. When General Greene was flying before Lord Cornwallis through the Carolinas, and his enemy was deriving almost as much aid from the tories as he could obtain from the whigs of that country, he yet never proclaimed martial law. Did *they* want prudence, circumspection, energy? No; but victory over the enemy would have had no charms for them, if achieved at the expense of liberty. The ready resort to violent measures in all situations of difficulty, is generally the result of weakness of understanding and wickedness of heart combined.

I shall make one more remark upon the principle of this measure, which those who have studied our institutions only, will think absurdly superfluous, but which whoever has studied our history also will allow to be seasonable. There is no man or body of men in this nation, competent, under any circumstances, to proclaim martial law within our own territory. The President cannot; Congress cannot; both concurring cannot: the most they can do, is to suspend the *habeas corpus*, in two specified cases, invasion and insurrection, and then only when necessary. The invasion or insurrection does not *ipso facto* create the necessity.

But, if the necessity and wisdom of this measure, and General Jackson's competency to adopt and enforce it, be all granted; let us see whether in the actual exercise of the high prerogative with which he had clothed himself, he preserved any bounds of moderation? whether he stopped short of extremes, which no necessity required, which no expediency recommended, and to which he could have been incited, only by the intoxication of absolute power, the wantonness of caprice, or the madness of passion?

While the event of the contest was yet doubtful, on the vague information of one of his aids (the noted Duncan) that a design was agitated among the members of the legislature, to propose capitulation and surrender to the invading

enemy, General Jackson, though he must have known, that in the actual state of things (martial law still prevailing,) such a design could not be executed without his consent, "*ordered* Governor Claiborne closely to watch the conduct "of the legislature, and the moment the project of offering "a capitulation to the enemy, should be fully disclosed, to "arrest the members, and hold them subject to his future or- "ders. The Governor, in his zeal to execute the command "and from a fear of the consequences involved in such con- "duct, construed as imperative an order which was merely "contingent; and placing an armed force at the door of the "capitol, prevented the members from convening and their "schemes from maturing."* The historian does not assign another reason for Governor Claiborne's precipitancy, which I have heard, and have no doubt was the true one; that General Jackson had before threatened to hang him, if he should hesitate to do whatever he was commanded, or presumed to exercise his own judgment. But if the Governor be responsible for shutting the doors of the legislature in the first instance, who is to bear the blame of keeping them shut? For, in fact, *they were kept shut*, from the 28th December 1814, till about the 20th of January 1815, when the enemy retired to his ships.†

After the enemy, foiled and broken, had abandoned the enterprise, surely, the suspension of civil law and justice, and the tyranny of martial law, could no longer be necessary. Was civil liberty yet restored to the city? No: military despotism was still sternly maintained.

On the 10th of March, Admiral Cochrane announced, through Mr. Livingston who had been sent to the British fleet to settle a cartel, that news of peace had arrived at Jamaica. Certainly, the necessity of military despotism was now at an end. Did General Jackson relax his absolute au-

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* *Life of Jackson, p.* 319, 321.

† *Life of Jackson, p.* 374.

thority? It was only the occasion of enslaving the *press* to his *imprimatur.*

A few days after this intelligence, Mr. Louaillier, a member of the legislature, published a paragraph in the newspapers, calculated, we are told, to excite mutiny among the troops, and to afford the enemy intelligence of the situation and disposition of the army. The printer is incontinently brought before the General, and compelled (the poor printer afterwards told the story to his country, but it had no ears to hear) to disclose the author's name. Mr. Louaillier is forthwith arrested by a file of soldiers, without care or thought of the privileges of the assembly to which he belonged, dragged to camp, put into strait confinement,* and arraigned before a court martial as for a capital offence.†

Mr. Louaillier was not absolutely friendless, nor had his friends intirely lost the sense of freedom. They applied to Mr. Hall, district judge of the United States, for a *habeas corpus*, which he accordingly issued. The General knew (he had been a judge himself) that Judge Hall was bound by his oath of office and at his peril, to issue this writ. Every end he could have reasonably desired would have been answered by simply disregarding the precept. But he was not content with that; and, as if for the purpose of showing that *martial law* was something more than the *suspension of the habeas corpus*, he seized the person of the judge; exposed him and his function to ridicule and contempt; brought him under guard to camp; detained him for a time in close custody; and then sent him, by force, beyond the limits of his encampment, which included the city of New-Orleans and its environs, with orders to remain in exile from his family and his home, till peace should be regularly announced; for it seems from the order itself, that the general knew that peace was in fact concluded, though not yet formally communicated to him. The district attorney, Mr. Dick, a brave and honourable

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* *Life of Jackson, p.* 378, 381.

† *Niles' Register, VIII.* 274.

man, (I know him well,) applied to Judge Lewis for a *habeas corpus* to liberate Judge Hall, which Judge Lewis granted. The General instantly arrested Mr. Dick, and issued an order to arrest Judge Lewis also. Both these gentlemen had recently borne arms, under the General, against the enemy.*

At length, civil liberty was restored with peace, and General Jackson was summoned by the Judge to answer for this contempt of the laws in the treatment of his person and authority. "If," said the magistrate, "the party object to "the jurisdiction of the court, he shall be heard: if his de- "fence be a denial of the facts charged, or that they amount "to a contempt, he shall be heard: if it be an apology to "the court, or show that by the constitution and laws of the "United States, he had a right to do as charged, the court "will hear him." This is complained of, as not allowing latitude enough! He demanded leave to abuse and vilify the judge! The written defence he offered, being rejected by the court, was printed, and is before the public. I should smile at its wretched sophistry, if I were not alarmed at its audacity, and disgusted at the impudence with which he pleads, as his protection from summary punishment, the very constitution and laws he had so long and so recklessly trampled under foot; and denies his own plea of necessity as a proper foundation or the known settled practice of our courts of justice in cases of contempt. He was fined a thousand dollars; interrupted, insulted, and brow-beat the judge on the judgment seat; and retired amid the huzzas of a people "tamed to wrongs, or this had been his last."†

Did the legislature of Louisiana remonstrate, or demand redress? In the uttermost abjection of slavery, they durst hardly withhold from him their thanks. Did the people, in any part of the Union, murmur or complain? The Turks had not remained more quiet and contented. Did the press,

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* *Life of Jackson, p.* 381—*Niles' Reg. VIII.* 372, 374.

† *Life of Jackson,* 388, 390—*app. F. Niles' Reg. VIII.* 211, 213.

the watchman of Liberty (especially of its own) the warder on the wall, give the alarm? *He was either talking, or pursuing, or peradventure he slept and could not be awoke.* Did the General humble himself at the feet of the constitution, and pray an inquiry into his conduct and motives? Did the Executive of the United States order any trial, any inquiry, or utter any censure, any disapprobation? Did Congress pass an act of indemnity, which, acknowleding the purity of his motives and the necessity of his measures, but affirming their illegality, obviated in some measure the dangerous consequences of the example, at the same time that it protected the officer from being punished or questioned? No! History, that records his ninety days tyranny, records also, that his whole conduct stands unquestioned to this day, as if it were the regular exercise of undoubted authority.

Still, many wise and good men may be inclined to find an excuse for us all, in the circumstances attending and following the transactions at New Orleans. But what will they say, if in time of profound peace, without the least pretext of necessity, and contrary to all reasons of expediency, he has shown the same disposition to set himself above all the constituted authorities?

The Union was laid off into large military districts, during the late war; a measure of convenience and utility, perhaps, in time of war, but (I should think) utterly unsuitable to a state of peace. The same organization, however, either through listlessness, or for some reasons inscrutable to me, has ever since been continued. In April 1817, General Jackson, commander of the *division of the South*, published an order prohibiting the officers of his division, from paying obedience to any order of the war department, unless coming through him as the proper organ of communication.* I shall not stop to examine the justness of a pretension, superlatively absurd and ridiculous on its face. I protest I discern no adequate motive to account for it. Was it perverseness? or

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* *Niles' Reg. XII.* 320.

pride? or military etiquette? or did the General design this order, to preserve by way of continual claim, his independence of, or rather his ascendant over, his lawful superiors? If such were the design, it has, for aught we know, completely succeeded. I have *heard*, that this contest for supremacy has been adjusted to the satisfaction of the Executive. I *know* that no atonement has been made for the insult and injury to the nation. The dignity of the government is a part of its authority, with which it is clothed, as with all the rest, not for the personal advantage or honor of ministers, but for the public good.

I ask your attention now, to the events of the present year. General Jackson being again ordered to assume the command of our southern army in person, and to chastise and curb the Seminoles, the State of Georgia was doomed to behold his presence in the field. The constitution of the United States expressly reserves to the State governments, the appointment of the officers of their respective militia; and the constitution of Georgia, (like the constitutions or laws of every other State in the Union) appoints the Governor, *ex-officio*, commander in chief of its forces, regular and militia. It is an authority, indeed, essential to the existence of the State sovereignties, and to the integrity of our system. To the astonishment of the nation, General Jackson declares that his command virtually suspends the constitution of Georgia, in respect to the military authority of its Executive at least; and in what other respects, we shall know when occasions shall occur, as in Louisiana, to develope the full extent of his pretensions. Governor Rabun had issued an order to a militia officer, never doubting, I dare say, his own constitutional and lawful power. The order was most vilely abused. General Jackson, not content with assuming the power of redressing the abuse (for *that* was an usurpation,) questions and denies the authority of the order itself. In his letter of May 7, 1818, he tells Governor Rabun, in plain terms—"You, sir, as Go-"vernor of a State within my military division, have no right "to give a military order while I am in the field." Behold

the monstrous consequences of this broad and bold pretension, if it should obtain! Should an insurrection occur in any of the States belonging to *the division of the South*, while General Jackson is in the field, the Governor of the State, and of course every inferior officer of the militia, must patiently endure the horrors of a servile war, till his high behests can be known! I cannot repress the sentiment of astonishment I feel, that the legislature or the representatives of Georgia in Congress, have not demanded his immediate arrest and trial.

But in truth, we have the best reason for believing that in General Jackson's opinion, whenever he is at the head of an army, all the powers of every branch of our governments, State and Federal, are suspended or transferred to him.—His instructions for the conduct of the war against the Seminoles may be gathered from the President's late message to Congress: he was authorised to pursue the savage enemy into the Spanish territory, if he should take refuge there, taking care not to encroach on the rights of Spain. According to the laws of nations, it is absolutely unlawful to *attack* an enemy in a neutral country, or commit in it any other hostility; but if a neutral afford a retreat to one belligerent, and allow him time to recover, and watch a favorable opportunity of renewing his attack on the territories of the other, that other may march into the neutral territory in quest of his enemy. The orders which were given to General Jackson (as I understand them) authorised him to carry war into Florida against the Seminoles, but not to commit hostility against the subjects of Spain; and his correspondence shows, that he himself understood them in the same light. I acquit the Executive, therefore, of intending a violation of the constitution, in waging war without a previous declaration of it by Congress. The merits of General Jackson's conduct may be stated in a few words. Disregarding his orders, usurping the powers of Congress, which alone by our constitution is capable of declaring war, he took St. Marks by assault, and Pensacola by capitulation; the first on the 7th of April, and the latter on the 27th

of May. Whether in the interval of fifty days which elapsed between the seizure of the two posts, the Executive had time to get intelligence of his proceedings, and send new orders to the General? whether it did send him such orders? and whether he was instructed to persist in or to forbear further aggressions against Spain? are questions, which well deserve a solution, but which are not to be discussed in the actual state of the information before the public. This only we know, that the President, while to preserve peaceful relations with Spain, he disavows General Jackson's proceedings, at the same time excuses and applauds that officer himself for these very acts. Whether the circumstances, which came to General Jackson's knowledge, during the campaign, would have afforded just cause of a declaration of war against Spain, is not the question: whatever those circumstances were, it was an usurpation in General Jackson to wage war upon his own judgment. What does General Jackson, about the time of these very proceedings, say on this very subject, to Governor Rabun? He indignantly denies his right to make war against an Indian tribe in peace with and under the protection of the United States. Out of his own mouth I condemn him.

The laws of nations afford no more protection to individuals against the violence of this officer, than to sovereign States. I allude to the trial and execution of Arbuthnot and Ambrister. To give a general character of these strange proceedings, *they were indictments, convictions and capital executions, of foreigners, for high treason against the United States, to which they owed no allegiance, committed and prosecuted in a foreign territory and jurisdiction!*

The first objection, to which those proceedings are liable, is, that admitting these men were guilty of all the offences alleged against them; admitting, that, according to the laws of nations, they by such guilt incurred the forfeiture of their lives; they were not amenable to the tribunal before which they were arraigned. Our courts martial have no lawful jurisdiction, beyond that, which is given them by the acts of Congress establishing the rules and articles of war; and it will

hardly be pretended, that these have vested in them any cognizance over crimes of the nature of those imputed to these unhappy men.

If the jurisdiction be admitted, the sentence against *both* of them was unjust in law; and the sentence against *Arbuthnot* was unjust in point of fact.

Arbuthnot was found guilty by the court martial, on two charges: 1st, of inciting the Creek Indians to war against the United States, he himself being a British subject and his nation at peace with ours; 2d, of aiding, abetting and comforting the enemy, supplying them with the means of war. It will hardly be believed, that the only proof adduced, applicable to the first of these two charges, was, the evidence of John Winslet, detailing the contents of a letter the witness had interpreted for an Indian chief called Little Prince, which the witness said was signed by *a* Mr. Arbuthnot, without stating that it was signed by *the* Arbuthnot who stood accused, though it appears he was acquainted with his hand writing; and the evidence of William Hambly (Arbuthnot's known and mortal enemy) that the witness had been *told by the Indians*, that Arbuthnot had instigated them to war against the United States, and to the murder and plunder of our citizens. When the public is informed, that the rules of evidence are the same in courts martial, as those that prevail in courts of law, it will be at no loss to make a fair estimate of the merits of this conviction. As to the second charge (discarding the hearsay evidence of the same William Hambly) the principal proof of the charge was drawn from the prisoner's own correspondence, and some other documents. I say, confidently, that those papers contain not the least proof, that he ever incited the Indians to offensive war, or aggression of any kind, against the United States or their citizens; they relate to measures of defence and prevention against aggressions upon the Indians. Far from instigating them to war, he manifestly considered their utter ruin as the certain consequence of a war with the United States. He labors, therefore, to impress upon *their* minds, upon the British minister at Washington,

and on other correspondents, that the encroachments of our citizens were not countenanced by the President. In his whole correspondence there is not to be found one word stronger than the following letter to our Indian Agent, General Mitchell, of January 19, 1818:—"In taking the liberty "of addressing you, sir, in behalf of the unfortunate Indians, "believe me I have no wish but to see an end put to a war, "which if persisted in, I foresee must eventually be their ruin; "and, as they are not the aggressors, if in the height of their "rage they have committed any excesses, that you will over- "look them, as the just ebullitions of an indignant spirit "against an invading foe." It is true, he was the organ or the instrument of the Indian appeals to the officers of his own and the Spanish governments, of their applications for protection in what they deemed their just rights, and of their remonstrances to our own Indian Agents, against past or anticipated injury and oppression. It is possible too, that he supplied them with some scanty munitions of war; though a merciful court would have inferred, that nine kegs of powder and 500 pounds of lead, were imported by an Indian trader, as a supply for hunting, not for war. That he took a deep interest in the affairs of this devoted race; that he deplored their miserable condition; that he regarded them as his fellow creatures; and was desirous and active to save them from utter extirpation; of these *unchristian* crimes (as General Jackson considers them,*) he was certainly guilty. The General regards him as a secret agent of the British government, and thinks that government was well advised of his proceedings.* I think it very probable....But that would prove not his guilt, but his innocence. It would prove that it was not the individual, but the British government that had wronged us, if any wrong had been done. Its subject could be guilty of no fault in following its orders....Every subject or citizen owes obedience to his government; except, indeed, the officers of General Jackson's own *division of the South.*

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* *See official despatch of May* 5. 1818.

Ambrister was convicted, 1st, of aiding, abetting and comforting the enemy, supplying them with the means of war; and 2dly, of leading and commanding the Creek Indians in war against the United States; he being a British subject, and his country at peace with ours. It is needless to discuss the evidence adduced in support of the first charge, as the accused confessed the second, which is far the stronger of the two. It is unaccountable to me, how the court martial, convicting this man on these charges, should in his case, have commuted the punishment of death for that of stripes and imprisonment, and should not have recalled the sentence of death it pronounced against Arbuthnot. Is it not clear, that, upon their own principles, Ambrister was the more heinous criminal?.

But if the guilt of these men, with every imaginable aggravation, be admitted, the question would still remain, whether, according to the laws of nations and the usages of war, they were liable to the punishment of death? It is impossible for the meanest capacity, to misunderstand the writers on public law, so far as to see in them any authority for the monstrous principles affirmed in the fatal general order. Discarding the illustrious instances of La Fayette, Kosciusko and De Kalb, the question may be brought immediately home to our bosoms, in its application to the humblest and obscurest of mankind. American and British merchants are, at this very time, supplying the royal and revolutionary armies in Spanish America (whichever affords the best market) with all kinds of munitions of war: If the masters and crews of their vessels should be taken in the very act of carrying on this trade, are they liable to be arraigned before a naval or military court martial, sentenced, and hanged up at the yard arm, or on the next tree? Many of our youth have accepted commissions in the Patriot army, and are fighting the battles of South American independence; should they fall into the hands of the royalists, has Spain a General, or could a court martial be detailed from her armies, who would hang them in cold blood? When I hear it urged, that Arbuthnot and Am-

brister did not unite in war with civilized nations, but with the wild savages of the forest, who do not respect the laws of civilized warfare; I look into the history of my own country, and find there (thank God) that such a distinction is not to be endured at this day. We never before heard of it. Had it prevailed, I know not how many Englishmen Gen. Wayne might have hanged, in the war he conducted against the Indians; but *he* could not silence the pleadings of conscience and humanity in his own bosom, or encounter the frown of Washington. Had it prevailed, why were not the British prisoners, taken on our northern frontier during the late war, fighting by the side of savages, whom they and their government had incited to hostility against us, at a time too when (to the disgrace of the British name) rewards were offered for American scalps; why were they not, all, instantly tried, convicted and led to execution?

Where (as it has been justly asked) was the necessity of executing these two men, even if their sentence was undoubtedly right? The Seminole war was at an end: and had it still been raging, General Jackson could have sent these prisoners in chains to the United States, to be dealt with according to the wisdom of his government. The blood even of the guilty should not be shed without reluctance and without any good end.

As to Ambrister, the court martial did not condemn him to die. The first sentence, as General Jackson is pleased to consider it, being instantly rescinded by the court, was in truth no sentence at all.....His approbation could not revive its existence. The last sentence was the only sentence. When the commander in chief disapproved it, the most he could rightfully have done, was to order the court martial to reconsider it. By what authority, then, was Ambrister doomed to death? By the sovereign will of Major General Andrew Jackson, in whose hands are the powers of peace and war, life and death.

Mr. Gales, in his officious and awkward zeal to excuse this part of the General's conduct, suggests, "that it was *no doubt* "dictated by a regard to the wishes of the prisoner, who pre-

"ferred death to the ignominious punishment, for which that "fate was commuted by the court."....This is not a mere surmise of Mr. Gales. If the fact be so, it aggravates the General's guilt. A brave man asking death at his hands, as a refuge from disgrace, should have moved him to respect, sympathy and pardon. What shall we think of this man, the utmost stretch of whose clemency, *according to his defenders*, is to inflict death for mercy's sake?

Thus, has an American officer destroyed the lives of two of his fellow creatures, without any rightful power, without any adequate motive, and with such indecent precipitancy as hardly to give time for prayer, in the interval between judgment and death. Humanity bleeds at the recital; and national pride sinks in the American heart, oppressed with the load of shame and grief.

And all that the President of the United States has said, and all he has done, is, to tell Congress, that a copy of the proceedings of the court martial, in the trial of Arbuthnot and Ambrister, shall be laid before them; and to fulfil the promise!

Here, for the present, let us shut the scene. General Jackson, from the moment he was intrusted with command, has, avowedly and systematically, made his own will and pleasure, the sole rule and guide of all his actions: he has suspended the Executive, legislative and judicial functions of the States, with arbitrary sway, and assumed to do so as of right: he has insulted the Executive of the United States, at whose pleasure he holds his commission, spurned its authority, disregarded and transcended its orders: he has usurped the high prerogative of peace and war, intrusted by all nations to the sovereign authority of the State, and by our constitution to Congress alone: he has abrogated the known laws of nations, and promulgated a new code of his own, conceived in madness or folly, and written in blood: he has, in fine, violated all laws human and divine, and violated them with impunity.

Unconnected with public men, bearing no part in public affairs, a silent spectator of ordinary political occurrences, I can yet never be indifferent to great questions of right, that

directly affect the peace, the honor and the constitution of my country. I see no reason, on the present occasion, to forbear the public communication of my opinions; or to soften, if I could, the indignant language of truth and justice. Liberty is not of spontaneous growth in any soil or clime; and he is deaf to the voice of experience, who deems it that hardy plant, which will flourish even after it has taken root, without continual pains and cultivation.

ALGERNON SIDNEY.

From the Richmond Enquirer of January 5, 1819.

TO THE HONORABLE JOHN QUINCY ADAMS,

SECRETARY OF STATE.

Sir,—I have read your letter to our minister at Madrid, of the 28th November 1818, with the profound interest and attention which the subject inspires and demands, and with all the respect due to your own character, and to the supreme Executive authority of the nation, of which you are the organ. You will not, I presume, be surprised or offended, if I regard that paper as only in form addressed to Mr. Erving, but really to the American public, and designed more to remove doubts and discontents at home, than to answer the complaints of the Spanish government. In every view, you are entitled to a full and fair hearing. If I have not been grossly misinformed, you, and you only, advised the course, which the President has thought proper to pursue, in relation to General Jackson's proceedings in Florida; and considering the heavy and awful responsibility you have incurred, I wonder neither at the earnestness of your zeal nor at the copiousness of your eloquence. You have great advantages; high station, a character justly respected, acknowledged abilities, and every means of full and precise information: Add to which, we recognise the professor of rhetoric in the Secreta-

ry of State. But you will hardly reconcile the understandings and the hearts of your countrymen, to your new maxims of public law, as dangerous as they are cruel and abhorrent from the national character for moderation, clemency and justice; nor will you ever persuade us, to find, in your recriminations against Spain, however just and well founded, a satisfactory apology for infractions of our own constitution and violations of our dearest rights.

The complaints of the Spanish minister, may be stated in his own words; since without pretending to deny the acts complained of, you avow them all, and boldly maintain that they are perfectly justifiable. "His Majesty's territory" (says Don Pizarro in his note to Mr. Erving of the 29th August 1818) "has been shamefully invaded; his posts and places "violently seized on; their garrison made prisoners, and con- "veyed out of the province in which they were employed in "his majesty's service; and, on the Spanish soil, sanguinary "executions have taken place, of the subjects of powers in "amity with the King; an act of barbarity glossed over with "the forms of justice, and thereby rendered, considering the "place and other circumstances, a refinement of cruelty." The Spaniard, probably, regarded those sanguinary executions as of trivial importance, compared with the unceremonious invasion of Florida, the hostile occupation of St. Marks and Pensacola, and the capture of the Spanish Governor and garrisons; while you (for reasons obvious enough, considering the real purposes of your letter,) regard those executions as the principal ground of complaint against General Jackson's proceedings. For my part, I am content that you shall regulate the course of the discussion, according to your own opinion of the importance of the topics.

In the representation you make of the cases of Arbuthnot and Ambrister, I observe you refer to some evidence, which I, who have access to no source of information whatever but the newspapers, have never seen. Judging from the documents and testimony that were before the court martial, it was my deliberate opinion, as I have already told the public, that

Arbuthnot was not guilty of the offences laid to his charge; and though I shall not lightly renounce that opinion, and certainly not, out of mere deference to your judgment; yet I will not presume to dispute the justness of inferences, which you have drawn from additional evidence that I have never had an opportunity of examining. For the present, then, I will take for granted, that you have come to a correct result as to facts: that it is true, "that Arbuthnot and Ambrister were not only "identified with the savages (with whom they were carrying "on war against the United States) but that Arbuthnot was "the mover and fomenter of the war, which, without his in- "terference and false promises of support from the British "government, would never have happened; and that Ambris- "ter was the instrument of war against Spain as well as the "United States, commissioned by M'Gregor, and expedited "by Woodbine, upon their project of conquering Florida "with the Indians and Negroes." And now, sir, the question shall be fairly stated in the words of your own conclusion: Whether, "as the accomplices of savages, and (sinning "against their better knowledge) worse than savages, Gene- "ral Jackson, possessed of their persons and of the proofs "of their guilt, might, by the lawful and ordinary usages "of war, have hung them both, without the formality of a "trial?"

I mean to meet you fairly upon your own ground, and to resolve this question by an appeal to authority, and (what is more) to the very authority to which you refer.

General Jackson asserts, in general terms, as his own ground of justification of his conduct, that "it is an estab- "lished principle of the law of nations, that any individual "of a nation, making war against the citizens of any other "nation, they being at peace, forfeits his allegiance, and be- "comes an outlaw and a pirate." I believe, that not one man in this nation, has had the hardihood to attempt a defence of the General upon his own principles. Why have you passed by this ground of defence, in utter silence? It is too remarkable to have escaped your attention. Of your

opinion I can have no doubt. You know, *that a person, who joins an enemy and fights in his cause, is to be considered and treated as an enemy.* This is the whole of the law of nations on the subject. You owed it, sir, to yourself, to your government, your country, and your God, to express, publicly, your decided disapprobation of this novel, preposterous and dangerous doctrine.

Abandoning General Jackson's law of nations, and, doubtless, approving in your heart, the general voice on that subject; you have placed his justification on intirely different grounds, which he probably never even thought of. Yet, in a case like this, the justification, to be satisfactory, ought to be palpable. You say, that "contending with such enemies" as the Seminoles, "although humanity revolts at intire retaliation upon them, and spares the lives of their feeble and defenceless women and children, yet mercy herself surrenders to retributive justice, the lives of their leading warriors taken in arms, and still more the lives of foreign white incendiaries, who, disowned by their own governments, and disowning their own natures, degrade themselves beneath the savage character, by voluntarily descending to its level." And to prove, that "this is the usage of legitimate warfare," you quote two passages from *Vattel*, which seem to support the proposition, only because you have omitted to quote the context necessary to explain the author's meaning. Nor can I account for the manner of these quotations, more charitably or respectfully towards you, than by supposing, that you felt the oppression of this part of your subject, and were in too much haste and anxiety to dispose of it, to examine it with patience. I have little else to perform but the dull work of quoting the whole of these passages.

One of your quotations from *Vattel* is in these words: "As a General has the right of sacrificing the lives of his enemies to his own safety or that of his people, if he has to contend with an inhuman enemy, often guilty of such excesses, he may take the lives of some of his prisoners, and treat them as his own people have been treated." Now,

let the whole passage be laid before the public. Speaking of a kind of retaliation sometimes practised in war, under the name of reprisals, *Vattel* says, "if a General of the enemy "has, without any just reason, caused some prisoners to be "hanged, a like number of his men, and of the same rank, "will be hung up, *signifying to him, that this retaliation will "be continued for obliging him to observe the laws of war.*— "It is a sad extremity thus to put a prisoner to death for his "General's fault, and if this prisoner before was promised his "life, reprisals cannot be made on him with any colour of "justice. Yet, as a Prince has a right of sacrificing the lives "of his enemies to his safety, and that of his own men, if he is "engaged with an inhuman enemy, who frequently commits "such enormities, he *appears* to have a right of refusing life "to some of the prisoners he may take, and of treating them "as his were treated. But Scipio's humanity is rather to be "imitated."* And then follow some historical illustrations, according to the manner of this author. I shall resort to our own history for an illustration. But let it be first observed, that notice of the retaliation must be given to the enemy; consequently, the retaliation is only justifiable *flagrante bello.* It was upon this principle that General Washington acted when he caused Sir Charles Asgill to be designated by lot, as the victim of a just and necessary retaliation for the excesses committed by his enemy. Whether that case be at all similar in principle to the present; whether General Washington's conduct in regard to Sir Charles Asgill, be in the least like General Jackson's proceedings against Arbuthnot and Ambrister; in fine, whether the passage you have quoted from *Vattel* be in any manner apposite to your purpose; let the good sense of the public decide. General Jackson had already sacrificed two victims to this policy of retaliation: on

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* *Vattel's Law of Nations, Book III. chap. VIII.* § 141. *I observe that Mr. Adams either translates for himself from the original, or uses a different translation from that I have had access to. It is unimportant; but I mention it to avoid the imputation of unfairness or presumption.*

the 9th April, 1818, he wrote to the Secretary of War, that "Francis or Hills Hago and Hemattlemico" (Hillis Hadjo and Hamathli Micco, as you write their names) "had been hung; the latter commanded the party who so inhumanly sacrificed Scott and his companions." He assigns no particular reason for hanging Hills Hago. In truth, almost every one of the few Seminole warriors he could find, whether they made or were in a condition to make resistance or not, were put to death. This looks more like extirmination than retaliation. At any rate, it was retaliation enough.

Your other quotation from *Vattel* is certainly applicable, though as certainly insufficient. You give it to us in these words: "When at war with a ferocious nation, which ob- "serves no rules and grants no quarter, they may be chas- "tised in the persons of those of them who may be taken; "they are of the number of the guilty; and by this rigour "the attempt may be made of bringing them to a sense of "laws of humanity." And then the author adds, what you omit: "*But wherever severity is not absolutely necessary, cle- "mency is to be used.*"* What is to be considered *unnecessary severity*, he had before explained, in discussing the rights of nations waging just war, and what is allowed to them against their enemies. "All these are to be deduced from "one single principle, the end of a just war: for when the "end is lawful, he who has a right to prosecute this end, is "warranted in the use of all necessary means to attain it. "The end of a just war is to avenge or prevent injury; that "is, to procure by force the justice that cannot otherwise be "obtained; to compel an unjust person to repair an injury "already done, or to give security against any wrong threat- "ened by him. On a declaration of war, therefore, this na- "tion has a right of doing against the enemy, whatever is "necessary to this justifiable end of bringing him to reason, "and obtaining justice and security from him. The lawful "end gives a true right only to those means, which are ne-

* *Vattel's Law of Nations, Book III. chap. VIII.* § 141.

"cessary for obtaining such end. Whatever exceeds this, is "censured by the law of nature, is faulty, and will be con- "demned at the tribunal of conscience. Hence it is, that the "right to such or such acts of hostility varies according "to their circumstances. What is just and perfectly inno- "cent in a war, in one particular situation, is not always so "in another. Right goes hand in hand with necessity, and "the exigency of the case, but never exceeds it. It being, "however, very difficult always to form a precise judgment "of what the present case requires; and every nation being "a judge of what its own particular situation will allow; na- "tions must in this particular conform to general rules. Ac- "cordingly, whenever it is certain and evident that such a "measure, such an act of hostility, is necessary in general "for overpowering the enemy's resistance, and attaining the "end of a lawful war: this measure, taken in general, is ac- "counted by the law of nations a just right in war: though "he who makes use of it unnecessarily, when he might attain "his end by milder methods, is not innocent before God and "his conscience. Of this the difference between what is just, "equitable, irreprehensible in war, and what is only allowed "and not punished among nations, is founded. The sove- "reign who would preserve a pure conscience, and punctual- "ly discharge his duties to humanity, is never to lose sight "of what we have already observed more than once, that na- "ture gives him a right of making war, only in cases of ne- "cessity, when a remedy, ever disagreeable, though often "necessary, must be used against obstinate injustice or vio- "lence. If he is penetrated with this great truth, he will "never carry the remedy beyond its due limits; and will be "careful, that it shall not fall with greater weight on man- "kind, and cause more calamity and desolation, than is re- "quisite for the defence of his rights and the care of his safe- "ty."* Let General Jackson's conduct, in the cases of Ar-

* *Vattel's Law of Nations, Book III. chap. VIII.* § 136, 137.

buthnot and Ambrister, be tested by these principles. Has he punctually discharged the duties of humanity? Is he innocent before God and his conscience? Was the execution of these men necessary? Could the ends of the war have been obtained by no milder methods? The ends of the war! They were already accomplished; the war itself was at an end; at least, that was his own opinion at the time. I ask your minute attention to dates. In a letter to the Secretary of War, of the 20th April, he says: "I believe I may say that the de-"struction of this place" (Bowleg's town on the Suwaney) "with the possession of St. Marks, having on the night of "the 18th captured the late lieutenant Ambrister, and, as re-"presented by Arbuthnot, successor of Woodbine, *will end* "*the Indian war for the present; and should it be renewed,* "*the position taken, which ought to be held, will enable a* "*small party to put it down promptly.*" Indeed, so confident was he that the Indian war was at an end, that (as we learn from the same despatch) "*he had ordered the Georgia troops* "*to Hartford, to be mustered, paid and discharged.*" On the 26th, he writes still more explicitly: "My presence in this "country can no longer be necessary. The Indian forces "have been divided and scattered, and cut off from all com-"munication with those unprincipled agents of foreign na-"tions, who have deluded them to their ruin; *they have not* "*the power, if the will remain, of again annoying our fron-*"*tier.*" Now, it was *on that very day*, (26th April,) that the court martial was detailed for the trial of Arbuthnot and Ambrister; on the same day, it convened and proceeded to the trial of Arbuthnot; on the 27th, he was sentenced to die; on the 28th, Ambrister was put on his trial, and after 5 o'clock of that day, condemned, *but not to death;* on the 29th, the general order for the execution of them both was issued, and on the 30th, they were executed. Was the execution necessary? Just as necessary as it would be to execute Woodbine or Nicholls, if we could lay hands on them, at this time, or twenty years hence. Let us again recur to the example of General Washington, in whose hands power was a blessing

to mankind. It was not in compliment to the interposition of the Queen of France, though to flatter our royal ally he was willing to have it thought so, that he spared Sir Charles Asgill's life; he spared him, *because the necessity of retaliation had passed away*—otherwise, he who had stifled all the generous sympathies of his heart, and sternly doomed Andre to the gallows, had without hesitation delivered over Asgill to the executioner. The manner in which General Lee accounts for the forbearance of General Washington to make retaliation, when he had it in his power, for the treatment of Colonel Hayne, who was most unjustly and barbarously hanged at Charleston, by orders of Lord Rawdon and Colonel Balfour, is a forcible and exact illustration of my argument. "The change" (says General Lee) "in the demeanor of the "British commanders, and the evident fast approach of peace, "*rendered the severe expedient unnecessary.* He, therefore, "*indulged his love of lenity, and conformed his conduct to the* "*mild temper of the United States*, forgiving an atrocity, "which at any other period of the war, would not have been "overlooked."* So thought and felt the heroes of the revolution! Such was the temper of the United States, in the days of their youth and innocency! The laws of nations, especially of war, depending chiefly on usage, are to be studied in the pages of history.—The conduct of our revolutionary heroes, and particularly of their illustrious leader, might furnish us a just rule of action, in almost every case that can arise. But unhappily, the benefit of good, bears no proportion to the mischief of bad, examples.

Leaving you now, sir, to search for other and more apposite authorities, if indeed you think proper to labour in vain; I proceed to examine the remaining topics of your letter. You tell us, and tell us truly, "that from the period of our "established independence to this day, all the Indian wars "with which we have been afflicted, have been distinctly

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* *Lee's Memoirs of the Southern Campaign, vol. II. chap. XXXIII. prope fine.*

"traceable to the instigation of English traders or agents, al-
"ways disavowed, yet always felt, more than once detected,
"but never before punished." *In the usages of our Indian wars, then, you confess there is no support for your argument.* In February 1779, Colonel Clarke made the British Colonel Hamilton a prisoner at St. Vincents; and as he had been instrumental in the savage barbarities he had encouraged, he was, by order of the Executive of Virginia, put in irons, and confined in a jail. It is known that General Washington disapproved even this measure of severity, and the Governor of Virginia soon relented, and restored him to the condition of an ordinary prisoner of war. Allow me to suggest to you, as one reason for this our undeviating clemency: we have always known in our consciences, that we have constantly employed friendly tribes in war against those that were hostile, and fought ourselves by the side of savages, who spared no age, sex or condition; who gave no quarter in battle; scalped and tomahawked the vanquished, the wounded and the dying; and made prisoners only to add the pains of torture to the horrors of death. Shall rigors, never heard of while hordes of savages incircled our sparse and feeble frontier settlements, be introduced now for the first time, when, partly by wars among themselves and wars with the whites, and partly by the progress of our population, this devoted race is visibly and rapidly approaching to utter extinction?

You have taken great pains, sir, to prove that Ambrister was guilty of traitorous designs and practices against Spain herself: and this is gravely urged, as a reason to satisfy *Spain*, that General Jackson's execution of him, in her own territory, and within her own jurisdiction, was no violation of her sovereignty! and to satisfy *us*, that it was according to the legitimate usages of war!

You represent, that, under the circumstances, General Jackson "might, by the lawful and ordinary usages of war, have "hung both these men without the formality of a trial; that "to allow them every possible opportunity of refuting the "proofs, or of showing any circumstance in extenuation of

their crimes, he gave them the benefit of a trial by a court "martial of highly respectable officers." Can you expect us to forget, that in contempt of the opinion of this court of *highly respectable officers*, (who would have spared Ambrister's life,) deaf to the pleadings of mercy, steeling his breast against compassion, from whatever quarter it addressed him, the General, of his own mere will, doomed him to die the death?

You endeavour to establish, that the Spanish commandant at St. Marks, and the Governor of Pensacola, were themselves incendiaries, and accomplices with Arbuthnot, in inciting the Seminoles, the outlawed Red Sticks and the Negroes, to war against us. Do you mean that Spain and the world may follow your reasoning to its consequences, and infer that if General Jackson had hanged the Spanish commandant and Governor, the government of the United States would have approved and vindicated the deed?

When you describe the well founded objections of Arbuthnot against the competency of most suspicious hearsay testimony, adduced against him, as "technical cavils at the na- "ture of part of the evidence," I must suppose you have never bestowed a thought on the subject, much more examined the authorities he referred to. I assure you they are directly in point, and conclusive; and I say, with perfect confidence, that such evidence was never before *heard* by any American tribunal, civil or military, in a case of life and death, much more taken as a ground of capital conviction and sentence.

The remaining subjects of difference between us must be postponed to another letter. Be assured, I am not the personal, nor even the political, enemy of General Jackson, or of the President, or of yourself. My motives and my objects are intirely of a public nature, and concern what I conceive to be the general weal....It is my understanding, not my heart, that has dictated these lines. I am possessed with no angry feeling or party spirit on the subject. I have feelings, indeed, of another kind, which, as an American and a christian, I am not ashamed to have avowed; of which, since I learn they

are censured at Washington, I am proud to repeat the avowal. The fate of Arbuthnot and Ambrister moves me to pity and regret. *Homo sum; humani nihil à me alienum puto.* Were they the vilest felons, murderers, cannibals, I should still have viewed their death with horror, if inflicted without an undoubted legal sanction. Whatever were their crimes, they were intitled to justice; and I would never tolerate an irregularity of trial and punishment, because the victims are worthless or odious; since the same injustice that smites the guilty to day, may to morrow shed the blood of the innocent. Were these men ever so regularly and justly tried, convicted and condemned, I should still have claimed some respite for them, to arrange their affairs, to bid a last farewell to their families and friends, and to make their peace with Heaven. While I admit, that in such a case this would have been a subject for the General alone to consider; I think there was no need, on the present occasion, for the usual promptitude of military execution; and if you will give your attention to this part of the transaction, I cannot doubt but you will agree with me in this respect at least. I appeal to the affections of the son, the husband and the father, in your own bosom, and to the sympathies of our common nature.

ALGERNON SIDNEY.

P. S. Justice and decency require, that I acknowledge my obligation to *The Enquirer*, of the 15th December, for a considerable part of the argument in the above paper.

A. S.

From the Richmond Enquirer, of January 12, 1819.

TO THE HONORABLE JOHN QUINCY ADAMS,

SECRETARY OF STATE.

SIR,—Your letter to Mr. Erving refers to a vast mass of evidence, of which I have not been able with the utmost pains and diligence to collect the whole, if indeed the whole be yet

published. If I were to form a judgment from the evidence I have seen, I should certainly regard your representation of the late transactions in Florida, as the rhetorical exaggeration of eloquence and zeal, rather than the fair deduction of reason and justice. Yet, for the honor of my country, I sincerely wish it may be correct. Neither do I mean to deny any part of it. To controvert your conclusions, without a full view and thorough examination of the evidence from which they are drawn, were at once indecent and futile. I am thus embarrassed by the want of information as well as of ability; and am as sensible, as you would have me, of the inequality I labour under in the discussion. But I proceed in it with confidence; indued with a strength not my own, derived from my end, which is justice, and my weapons, truth and reason.

Let all the facts you assert, be granted: that Spain, either through weakness or bad faith, failed to fulfil the stipulations of her treaty with the United States, in neglecting to employ an adequate force to restrain the Indians, residing within her territory, from hostilities against us: that her officers in Florida admitted a foreign incendiary into that province, with full knowledge of his wicked designs: that the "complicity" of the commandant at St. Marks and the Governor of Pensacola, with that incendiary, with the Seminoles, the outlawed Red Sticks, and the Negroes, is really "demonstrated:" that those officers took an active part in inciting this barbarian war against us; encouraged the devastation of our frontier, by affording a market for the spoil; supplied our savage foe with the means of war, and gave him shelter and protection in their fortresses. Let it be supposed, that the power of declaring war, and that yet higher attribute of sovereignty, the power of making war without any previous declaration of it, are lawfully vested in Major General Andrew Jackson, commander of the division of the South. All I ask you to grant on your part (and I hope it will be thought a reasonable *postulatum*) is, that he, like the sovereign of every other civilized people, is bound to observe the established laws of nature and nations.

Did all the wrongs combined of which we complain, furnish justifiable cause of war against Spain or her dependencies, without a previous representation of them to her government, without a formal demand of redress for the past and security for the future, and refusal or unreasonable delay, on her part, to comply with such demand? To determine this question, sir, let us appeal to approved authority, in the first place, and then to examples, with which, happily, our own history abounds.

Vattel says—"A sovereign ought to show in all his quar- "rels, a sincere desire of rendering justice and preserving "peace. He is *obliged, before he takes up arms, and after* "*having taken them up also*, to offer equitable conditions; and "*then alone* his arms become just against *an obstinate enemy*, "*who refuses to listen to justice or to equity.*"* "His own "advantage, and that of human society, *oblige* him to attempt, "*before he takes up arms, all the pacific methods of obtaining* "*either reparation of the injury or a just satisfaction;* at least, "if he has not good reason to dispense with it. This mode- "ration, this circumspection is so much the more proper and "*commonly even indispensable*, as the action we take for an in- "jury, does not always proceed from a design to offend us, "and is sometimes rather a mistake than an act of malice; "*frequently, it even happens, that the injury is done by inferi-* "*or persons, without their sovereign having any share in it;* "and on these occasions, it is natural to presume, that he "would not refuse us a just satisfaction. When some inferi- "or persons violated, not long ago, the territory of Savoy, in "carrying from thence a noted chief of the smugglers, the "King of Sardinia caused his complaints to be carried to the "court of France; and Louis XV, did not think it beneath "him, to send an ambassador extraordinary to Turin, to give "satisfaction for that violence."† "It would be too contra- "ry to the peace, the repose and the safety of nations, to

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* *Vattel's Law of Nations, Book II. ckap. XVIII.* § 336.
† *Ibid.* § 338.

"their mutual commerce, and to the duties which bind them "to each other, for any one *suddenly to apply to force, with-* "*out knowing whether the other is disposed to do him justice* "*or to refuse it.*"* "Those *who run to arms without necessi-* "*ty*, are the scourges of the human race, barbarians, enemies "to society, and rebels to the law of nature, or rather to the "common father of mankind."† I leave it to you to make the application.

I know, sir, there are exceptions to these general principles; cases, in which there is good reason to dispense with the observance of them. "If any one would ravage from a na- "tion an essential right, or a right without which it could not "hope to subsist; if an ambitious neighbour threatens the li- "berty of a republic; if he resolve to subdue it, and bring it "into subjection; that republic will take council only from "its courage. It will not even attempt to wait the method of "conferences on so odious a pretension: it will bring into "this quarrel all its efforts, its last resources, and all the best "blood it is capable of shedding. It is risking every thing "only to listen to the least proposition; then they may truly "say, *una salus—nullam sperare salutem.*"‡ And again— "It is not always necessary to authorise having recourse to "arms, that all the methods of reconciliation have been ex- "pressly rejected; it is sufficient that there is the utmost rea- "son to believe, that the enemy would not even enter into "those measures with sincerity, that the issue of them could "not be happy, and that a delay could only tend to put the "State in greater danger of being oppressed. This maxim "is incontestible, but the application of it to practice is very "delicate. A sovereign, who would not be considered as the "disturber of the public repose, will not be induced abruptly "to attack him who has not refused pacific measures, if he is "not able to justify to the whole world, that he has reason "to consider these appearances of peace, as an artifice tend-

* *Vattel's Law of Nations, Book II. chap. XVIII.* § 343.
† *Ibid.* § 354. ‡ *Ibid.* § 332.

"ing to amuse and surprise him. To pretend to be author-"ised by his mere suspicions alone, is to shake all the foun-"dations of the safety of nations."* That our case falls not within either of these exceptions, there is no need of argument to prove. I am spared that labour. Our government has offered to restore to Spain the possessions conquered from her by General Jackson; though whether the offer be of any avail or not, without his concurrence, may well admit of doubt; since his conduct is approved and justified throughout, and, consequently, his power of waging war against Spain, and of conquering her dominions, is in effect allowed. Now, in general, he in whom the power of making war resides, is alone competent to adjust the basis of accommodation, whether the *uti possidetis* or *status quo ante bellum*. The Constitution of the United States is anomalous in that respect.—To return: the restoration of her possessions to Spain, amounts to a distinct admission by our government, that the wrongs committed against us by her constituted no such privation or invasion of our essential rights, and afforded no such reason to apprehend danger to our safety from the delays incident to negotiation, as to justify, according to the principles of the law of nations, an abrupt and unceremonious recourse to arms. This alone were conclusive. But more; at the very moment of General Jackson's irruption into Florida, and of his forcible seizure of Pensacola and its dependencies, a negotiation was actually pending between the United States and Spain, the objects of which were compensation for all the injuries we complain of at her hands, and the cession of both the Floridas.

If the doctrines quoted from Vattel, were less unequivocal and authoritative than they are, I should still find ample support for the opinions I entertain, in the invariable practice of our own government, through a series of years, under every administration, in a variety of cases, and those of incomparably greater urgency and importance than that in which Ge-

* *Vattel's Law of Nations, Book II. chap. XVIII.* § 334.

neral Jackson saw no remedy but instant war. Examples rise in quick succession, to condemn his rash (not to say mad) recourse to arms, and to confound his defenders. The retention of the western posts by Great Britain, in violation of the treaty of peace; the spoliations, to the amount of millions, committed by France upon our commerce, before and during your father's administration; the denial by Spain of our right of deposit at New-Orleans, contrary to her solemn engagements; the attack upon the Chesapeake, than which a more shameful abuse of the hospitality, and violent outrage upon the sovereignty, of the nation, can hardly be imagined; the impressment of our seamen, by British cruisers, on the high seas, in spite of their protections, persisted in for years; the sacrifice of neutral rights to belligerent interests, which was the avowed purpose and certain effect of the French, Berlin and Milan decrees, and the British orders in council: all these wrongs were the subject of long and patient negotiation. Nor did the nation resort to arms except in one single case; and then not till every effort of negotiation, every milder method of redress and contravention, had, in the opinion of the government, been tried in vain and exhausted. I know, that the history of military governments furnishes cases enough of a contrary complexion; and if we imitate their example, we shall as justly deserve, as we shall surely incur, the same punishment which Providence has visited on their folly and madness.

But, to my utter astonishment, you intimate an opinion, that the proceedings of General Jackson in Florida, ought not to be regarded as measures of hostility against Spain. But for the weakness of that power, and the imbecility of her government, she would resent such an insinuation as an insult more unpardonable than the injury. Neither General Jackson's acts are equivocal, nor are his motives and designs left to conjecture. As to St. Marks, if the facts were as you state (and I may not contradict your facts,) that "as he approach-" ed that place, he was informed, direct from the Governor of " Pensacola, that a party of hostile Indians had threatened to

"seize the Fort, and that he apprehended the Spanish garri-
"son there was not in sufficient strength to defend it against
"them;" I will not deny that he was warranted by the law of nations (supposing the orders of his own government imposed no restraint upon him) "in anticipating his enemy, by the "amicable, and that being refused, by the forcible occupa-
"tion of the Fort." But, for his operations against Pensacola, no such excuse is pretended. They amount to open war, in form, in fact and in consequence. I want no evidence but his own. In his letter to the Spanish Governor, of the 27th April, 1818, he details the facts, which, in his judgment, proved the unjust conduct of the Spanish agents in Florida, and concludes with a distinct menace of war: "Their "conduct," he says, "can no longer be tolerated; and al-
"though a republic, fond of peace, the United States know "her rights, and, *at the expense of war*, will maintain them." The meaning of this menace was not long left doubtful; it was not by the United States acting by the constituted authority alone competent to such a measure, but by the United States acting by the instrumentality of Gen. Jackson's heart, head and hand, deliberating, resolving, executing, through his will and power, that the rights of the nation were to be maintained at the expense of war. The language of his letter to the Spanish Governor of the 23d May, demanding the surrender of Pensacola and the Barancas, is explicit: "If "(says he) the peaceable surrender be refused, *I shall enter* "*Pensacola by violence*, and assume the government until "the transaction can be amicably adjusted between the two "governments. The military in that case must be treated *as* "*prisoners of war*." The peaceable surrender was refused: the General instantly proceeded to violence, and captured the town, the fort, the citizens and the garrison. In his official despatch, of the 2d June, he calls the Spaniards "*a conquer-*
"*ed enemy:*" he states that the articles of capitulation, "with "but one condition, *amount to a complete cession to the Uni-*
"*ted States, of that portion of the Floridas hitherto under the* "*government of Don Jose Masot*," the Spanish Governor of

Pensacola; and that he had organized a provisional government; rescinded the Spanish commercial code; established the revenue laws of the United States, and appointed a collector. With respect to Spain, this was not only war, but conquest; with respect to the United States, it was something more; it was the exercise of powers of legislation, belonging exclusively to Congress, and of the power of appointment, confided to the President and Senate.

I have only two more observations to add on this part of the subject. The first is, that while I agree that the Floridas would be a valuable acquisition to the United States, and one which it is wise and right in us to insist on, I should think them dearly purchased at the expense of our own character for moderation and justice, much more at the expense of the Constitution. The other is, that discarding all respect for the laws of nations, all concern for the rights of Spain, sound policy required, that for our own sake, General Jackson's proceedings in Florida should have been disavowed, disapproved and reprehended by our government. I doubt if you could have devised a course better calculated to prevent the voluntary cession of that province by Spain to the United States, than this open contempt of her sovereignty. You have piqued her pride, and confirmed her obstinacy; and while a spark of life shall animate her sinking empire, the sense of the indignity will still rankle at her heart, and I fear withhold her from the relinquishment of a territory, useless to her own power and interest, and beneficial only to us; a cession which sound policy not only justifies us in demanding, but should prompt her to make. And, if at last we go to war with her, (as we probably soon shall) we may find, in the jealousies excited abroad, and divisions at home, if not in the dispensations of Providence, that it is an immutable maxim of wisdom and policy "to be absolutely certain always in whatever contest "we are engaged, that our adversary be in the wrong."

Hitherto, I have considered General Jackson's conduct with a view to its bearing on our relations with Spain; but these transactions present other questions of far deeper interest,

touching the relations between that officer and the Executive, and between the Executive and the nation.

It is now ascertained beyond doubt, from the documents accompanying the President's message to Congress (if some information be not purposely withheld from the public, which I am far from suspecting) that in his hostile operations against the dominions and subjects of Spain, General Jackson acted not only without orders from government, but directly contrary to orders. The government hesitated long, before it would authorise its forces, to cross the line into Florida, in quest of their savage foe; and when at last it gave the order, its instructions were marked with a caution, suitable to the delicacy and importance of the measure. You inform us yourself, "that the officer in command immediately before "General Jackson, was specially instructed to respect, as far "as possible, the Spanish authority, wherever it was main-"tained; and copies of those orders were furnished General "Jackson, upon his taking the command." To ascertain General Jackson's instructions, therefore, we must refer to those which had been given to General Gaines. It seems General Gaines had suggested the propriety of such instructions: which, nevertheless, (as we learn from the two letters to that officer, from Mr. Graham, acting Secretary of War, of the 30th October and 2d December 1817) had been twice refused, as unnecessary and impolitic. The instructions that were at length given him from the War Department, appear in two letters of the Secretary, Mr. Calhoun, of the 9th and 16th December. In the first, the Secretary says: "Refer-"ring to the letters addressed to you from this department, "on the 30th of October and 2d of December, as manifest-"ing the views of the President, I have to request that you "conform to the instructions therein given. Should the Indi-"ans, however, assemble in force on the Spanish side of the "line, and persevere in committing hostilities within the li-"mits of the United States, you will in that event exercise a "sound discretion, as to the propriety of crossing the line, "*for the purpose of attacking them and breaking up their*

"*towns;*" thus regulating his discretion in the execution of his orders, by designating the objects to which he was to confine his operations. The other letter is in these words: "On "the receipt of this letter, should the Seminole Indians still "refuse to make reparation for their outrages and depreda- "tions on the citizens of the United States, it is the wish of "the President, that you consider yourself at liberty to march "across the Florida line, and to attack them within its limits, "*should it be found necessary, unless they should shelter them-* "*selves under a Spanish fort. In the last event, you will im-* "*mediately notify this department.*" Here, the government warily and expressly reserves to itself, the control and direction of any measures that might affect the neutrality of Spain. In my opinion, General Jackson violated these orders when he seized St. Marks: it was a measure, which the orders did not place within his discretion, and before he took such a step, he ought to have consulted his government. But the Governor of Pensacola, we are told, had given him an apology for that proceeding. For the seizure of Pensacola (I repeat) no such apology can be pretended. Before he marched against that place, he must have given his instructions to the winds. Upon what plea does he rest his excuse for *this* violation of his orders? *Necessity* again. "On the immutable principle "of self-defence authorised by the law of nature and nations, "have I bottomed all my operations." *He conquered Pensacola on the 28th May, on the immutable principle of self-defence! He*, who believed as early as the 29th April, that "the "Indian war was at an end, and should it be renewed, the "position he had taken, would enable a small party to put it "down promptly!" *He*, who declared on the 26th April, that the Indians "had not the power, if the will remained, of "again annoying our frontier!"

Why has this officer been permitted to transcend his instructions? to counteract the declared policy of the Executive? to take measures on the strength of his own judgment alone, that directly affect the peace of the nation? measures, which the government expressly told him, it did not intend to place

within his discretion? Why has he not been punished? Why not even called to account? Why has he been countenanced, justified, applauded? Hearken, sir, at length, to the warnings of experience; open your eyes to the light of history; and you will learn, that the government, which tolerates open disobedience, in effect relinquishes its authority, and the soldier, who may violate his orders with impunity, soon comes to dictate orders to his superiors.

If General Jackson had only disobeyed and violated his orders; if his offence had gone no farther than the prostration of the Executive authority and dignity; even this had been inexcusable and most pernicious. But would to God this were the *head and front of his offending!* He has violated the Constitution of the United States in one of its most essential provisions. In vain have the people and the States confided their peace and honour to the keeping of their representatives; in vain has the Constitution ordained, that Congress alone shall have the power of declaring war; if a military officer may wage war according to his own judgment of necessity or propriety, and if the approbation of the Executive be sufficient to justify the act.

You need not be informed, sir, that General Jackson is not directly responsible to Congress or to the nation: that he is amenable to the Executive, at whose pleasure he holds his commission; and that responsibility to the nation, in such cases, rests on the Executive alone. When the Executive approves and justifies, or acquiesces in the conduct of a military officer, it makes itself accountable for his faults, if any faults have been committed.

Upon the present occasion, I at first put my whole trust in the President, upon whose firmness and vigor I securely relied. His silence from the beginning surprised me; his message to Congress alarmed me; his earnest approbation of General Jackson's whole conduct, lately given to the nation and to the world, through the medium of your letter, has finally disappointed all expectations of redress at his hands. If he had brought General Jackson to trial before a court-

martial, if he had only appointed a court of inquiry to examine and report the facts, with its opinion upon them; if General Jackson had demanded a court martial or a court of inquiry, though the court martial had acquitted him; though the court of inquiry had not recommended an arrest and trial before a general court martial; I had never offered a murmur against either the General or the Executive. Its duty would have been at least ostensibly fulfilled; the dignity of the government decently sustained; the Constitution in some degree vindicated, and the evil of the example discharged of some portion of its malignity.

My next hope was in Congress; that it would express its opinion in a tone that would rouse the Executive to action, and assert with effect the supremacy of the civil authority over the military. And though that hope be waning, it is not dead. I have watched the course of the government of the United States for thirty years, from its origin to this day, with an attention habitually awake to such subjects, and I do not remember one single instance, in which Congress has interposed, with any earnestness or effect, to correct an abuse in the Executive department of the government. Yet, such is the peculiar and alarming character of the present case, that I will not despair of an efficient effort by the representatives of the people and of the States, to vindicate the fundamental principles of the Constitution, and defend their own rights and powers from invasion and destruction.

My last, best hope, is in the virtue and good sense of the collective body of the people. I have endeavoured, (I know not with what success) to rouse their attention to these strange transactions; satisfied with Dr. Johnson, that "on subjects, "on which the public thinks long, it commonly attains to "think right;" an opinion, which is the very fundamental principle of republican institutions. If *they* too remain unmoved and supine, I pronounce that the Constitution is henceforth, to all practical purposes, essentially changed. Its *squinting towards monarchy* will soon become more *awful* than ever; and the frown upon its brow, and the blood upon

its visage, forebode greater terrors and deeper horrors than the prophet gave us warning of. Nor will any thing remain to me, but to await in silence that new struggle for liberty, to which the freemen of this country will at no distant day be called; prepared, when the trial shall come, to bear my part, according to the measure of capacity it has pleased God to bestow upon me.

ALGERNON SIDNEY.

From the Richmond Enquirer, of January 14, 1819.

TO THE EDITOR OF THE ENQUIRER.

Sir,....My attention has been so engrossed with Mr. Secretary Adams's letter to Mr. Erving, that I forgot the honourable notice bestowed upon me, by a writer in the National Intelligencer of the 28th and 29th of December, who signs himself *Fiat Justitia;* an ominous signature, perhaps; and not the less so, because the author seems to have no idea of the precise import of the phrase. If *my* signature lead any one to think me an *Englishman*, his will betray no man into the mistake that he is a *Roman*. I had not intended to reply to him at all; for what would be the use of arguing with a man, who is so unacquainted with our institutions, as to believe, that Congress is the *tribunal* to decide on General Jackson's case; and who seriously demands of me, to point out the distinction in principle, between the proclamation of martial law and the impressment of a horse? But he has stated one or two facts, which I think deserve notice.

I introduced the grant of lands by the Creeks to General Jackson, in my first letter, by remarking that I was sorry (I was sincerely so) to say any thing, which might seem to affect his private character; of which not knowing any evil, I was careful not to speak any harm. Nor should I have alluded to the fact, if it had not been of a public nature, and of public consequence.

The only information I had, was drawn from the Journals of Congress. General Jackson was one of the commissioners for negotiating a treaty with the Creek Indians. The Creeks made a grant of land to *him* certainly, and, I believe, to others of the commissioners. The President recommended to Congress, that a law should be passed for confirming these grants. The bill for that purpose, was indefinitely postponed in the Senate (24th April 1816) the House of Representatives having previously (on the 16th) refused, by a large majority, even to consider it. Both Houses, doubtless, thought with me, that such a grant was contrary to the known policy of the government. Now, Mr. *Fiat* says that the Creeks pressed the grant upon him contrary to his wishes, and even made his acceptance a condition of the treaty; and that when General Jackson did accept the grant, he told them he would prevail with the President of the United States, to dispose of it for the benefit of the poor and distressed of their own nation. Of these facts, I never before heard the least suggestion or rumour: and whenever there shall be any better evidence of them, than the assertion of an anonymous writer, who himself does not state them as facts within his own knowledge, I shall be very ready to do the General justice, and acquit him of all improper or selfish motives. I do not ask such evidence as would be required in a court of justice; the General's own word will be sufficient for me. Or, if any kind of proof can be adduced, that he endeavoured to prevail with the President, to apply the grant to the charitable purposes that have been mentioned, I shall be satisfied. I do not wish to lay the least blame to him, but what the naked truth may import. He has enough to bear; and I have no personal resentments, no private ends, to gratify or accomplish.

This writer states another fact: that the President and the Secretary of War, Mr. Calhoun, have assented to the principle of Gen. Jackson's order of April 18, 1817, forbidding the officers of his division (which means in this case military *district*) to obey the orders of the War Department, unless communicated through him. How that affair was adjusted, I can-

not tell....But this I know, that in the summer of 1817, after that order was published, an order was sent direct from the War Department to the commandant of the forts and garrisons of Norfolk in this State; and that the order was obeyed. I expected General Jackson would arrest the officer; but he did not. I concluded he had yielded the point. I should, now, have very little confidence in Mr. *Fiat's* information, if it were not in some measure corroborated by a letter from the General to the Secretary of War, of 20th January 1818, in which I mark this passage: "Your letter inclosing your or-"der of the 29th *ultimo* has been received. Like yourself, I "have no other feelings to gratify, than those connected with "the public good; and it gives me pleasure to find that we "*coincide* in those *opinions* calculated to produce it. Respon-"sibility now rests where it should, on the officer issuing the "order, and the *principle acknowledged* is calculated to in-"sure that subordination, so necessary to the harmonious "movement of every part of the military machine." What are the *opinions* in which they *coincide?* What the *principle acknowledged?* If it turn out, that the principle of General Jackson's division order, has been assented to by the Executive, I pledge myself to take up the subject with Mr. Secretary Calhoun, in a military as well as constitutional point of view, and to show that it is preposterous and dangerous in the extreme. What this Mr. *Fiat* calls *military science* (which I thought quite another thing) is not confined to the army.

This writer, speaking of a fact I stated on the authority of General Jackson's biographer, politely tells me—*this is untrue;* because, forsooth, I omitted to mention a circumstance, which having come to General Jackson's knowledge many months after the transaction of which I complained, could not have entered into the motives of his conduct, and, therefore, had no bearing on the argument. The writers in the Northern prints who have thought proper to comment on my letters, have given us still prettier specimens of that sort of politeness, which adorns the conversation of common soldiers when they suppose their officers are out of hearing. Perhaps they learned their manners in that school.

I am reprehended for calling Mr. Duncan *the noted Duncan.* I will explain the reason of the epithet. I understood this to be the same man who acknowledged on oath, that he advised General Wilkinson to make a false copy of a letter, and to swear that it was a true one. If I am mistaken in the identity, I heartily ask Mr. Aid de Camp Duncan's pardon.

Mr. *Fiat* is offended with me for calling *necessity* the *tyrant's plea.* If the expression had not become proverbial, I should have acknowledged that I borrowed it from Milton—

"*So spake the fiend, and* with necessity,
"The Tyrant's plea, *excused his devilish deeds.*"

It is not my fault, that my *catalogue* of General Jackson's misdeeds is *black*, any more than that it is *long.* I heartily wish its complexion could be changed, and its length curtailed.

I expected to be accused of malevolence towards General Jackson, and prepared my mind to bear that piece of injustice; *namque in hoc tempore, obsequium amicos, veritas odium parit.*

I expected, too, to be called *Englishman* and *Tory*, and to be charged with *British feelings and propensities;* these being the invariable answers, which a certain class of politicians in this country (whose capacities can only be expressed in negative quantities) always make to whatever they find undeniable in fact or irrefragable in argument. I shall not defend myself against a charge I despise. But I will tell these gentlemen, that what they denounce as *British* feelings and propensities, are *Virginia* feelings and propensities. I know, that I represent the sentiments of the great majority of the good people of this Commonwealth, including many of our best and wisest men. As for myself, I am (thank my stars) a native *Virginian*, descended from native *Virginian* ancestors on all sides for many generations.

There is one observation, however, which I have heard from all quarters, that I certainly never anticipated. I have heard these papers called *bold, very bold.* I protest I did not

mean them so. I have lived to see Washington and Jefferson (to name no others) treated with the most unbounded freedom in the public prints—all their measures arraigned, their motives impugned; the one charged with *French*, and the other *British propensities;* and the private character of the latter wantonly exposed and traduced. I have known the present President successively charged with *French* and *British propensities.* Whatever men thought of all this, I never heard their public accusers charged with *boldness.* What is there in General Jackson's character or services, which should exempt his conduct from public examination? Is it that he has an army at his command? The evil of his example has attained to a greater height than even I imagined, if men's minds are so affected with the fear of his power, that they think me *bold.* Perhaps the government is right to temporise. For my part, as I entertain no personal ill will towards him, so neither do I stand in the least fear of him.

ALGERNON SIDNEY.

From the Richmond Enquirer, of February 4, 1819.

TO THE EDITOR OF THE ENQUIRER.

Sir,—The *Extract of a letter from Washington*, which you have copied into your paper of the 2d, would probably have altogether escaped my attention, if *you* had not republished it; and would certainly have passed without the least notice from *me*, if I did not infer, from your manner of calling my attention to it, that you wish or expect me, to repel the imputation of personal hostility towards General Jackson. I have already solemnly declared, that I am not his personal enemy; and what can I say more? He has done me no private wrong, nor indeed any public injury, which is not common to me with every freeman in the Union. I have done him no injury, public or private: unless it be an injury, to examine his

official conduct and character, carefully referring to the evidence of every material fact I asserted! unless it be an injury, to vindicate public right against his open and unatoned violations, laying the reasons of my opinions fairly before the world! The language of General Jackson's defenders is, for the most part, calculated to increase, rather than to allay, our fears and indignation. In their opinion, he is privileged, not only from any kind of legal inquiry or trial, but from all manner of public discussion. In their opinion, no press is free or faithful to the general weal, which publishes any thing concerning him, but pure panegyric; and no editor is republican, who does not exclude from his columns, all complaint, all inquiry, all argument, concerning abuses of power by the Executive or by the military.....Those who complain of you, Mr. Ritchie, would never have incurred the pains of the sedition law.

The treatment I have experienced at their hands is curious enough. They have taken great pains to manifest their *contempt* of me; not perceiving, that in respect to me, their conduct refutes their language; and that their affectation of superiority, makes them at once disgusting and ridiculous. One describes my style as *spongy and verbose;* another calls it a *seriatim* style; a third, (whose whole force consists in the free use of *italics*, in which, to do him justice, he cuts a figure) considers my arguments as too sophistical to deserve a serious answer; and hardly any of them will allow me common sense or information about the most ordinary affairs. All irony apart, I am really and heartily obliged to them. They have effectually drawn the public attention to my humble exertions in the public cause, and even given them some consequence in the public opinion.

I exempt *Amicus Justitiæ* from all complaint on the score of ill manners. His language is that of a gentleman. His only reason for thinking me *ungenerous* is that he differs with me in opinion. His main argument against me, consists simply in the conversion of a precept of the law of nations into a piece of advice.

I bespeak the pardon of *Hampden Junior*, for mentioning him in the same breath with the others; though he speaks in a tone of authority which ill becomes an address to the public. I am half tempted to enter the lists with him; and nothing withholds me from it, but the consideration, that I could effect no end of public good by continuing the discussion. Let him be assured, that I am as warm a friend of State rights as he would have me. At the same time, I do not acknowledge, that he has any authority to direct, in what public questions and on what occasions I shall take a part. I am very sorry to find, that there is one very serious difference between us on this head of politics. His jealousies of the encroachments of the general government, are directed only to the *Judicial* and *Legislative* branches. Now mine extend to the federal *Executive* also, and to the Executive chiefly, which wields the whole patronage and the whole military force of the nation. Congress has never proclaimed martial law, nor have the federal Judges ever hanged a man without a fair trial. Let the power of war and peace, no matter under what pretext or in what form, be conceded to the Executive; and the only remaining distinction between the President and a limited monarch, will be the elective character of the former; and some State necessity will soon arise, which will furnish a fair opportunity of proving, that that is a distinction without a difference. The Emperor of Austria is, or was before the French revolution, elective! In these remarks, I beg you will understand, that I am speaking of *principles not men;* of the regular operation of political causes, not of the motives or objects of particular statesmen.

Whether this gentleman has succeeded in showing, "that, "having left undone those things which I ought to have done, "and done those things which I ought not to have done, I am "not entitled to much consideration," I will not presume to determine: but this I know, that if his conclusion follow from his premises, no mortal man is "entitled to much considera- "tion." Even *Plato* and *Socrates* will lose much of the veneration that belongs to their characters.....I am very indif-

ferent concerning the reputation of the hasty papers I have written under this signature: humble as my ambition is, I build no hopes of fame on an occasional essay in the newspapers. Yet it is not the single opinion of *Hampden Junior*, or of any other individual, that can even settle the degree of consideration to which I am entitled; much less is his authority either competent or sufficient, to determine, without argument, the great questions which General Jackson's conduct has brought before the nation.

I am not a little surprised that *this* writer should charge me "with denying to General Jackson the merit of defending "New-Orleans"! I did in express terms, and in as handsome terms too as I could possibly find, allow him full credit for that defence. And I shall add, that if his energy had been directed only against the enemy, if he had respected the constitutional liberty of his countrymen, if he had not lately broken through all rule, and trampled on the principles dearest to the hearts of freemen; I myself would have lent a hand to bind around his brow, laurels that would not wither, and honours that would never fade. But I have no eulogies to bestow upon him now. I am not that lamb "which licks the hand, just raised to shed its blood," though it be the same hand that once fed me; nor have I either gratitude or veneration for the man, who in my opinion, has inflicted a vital wound upon the Constitution of my country.

ALGERNON SIDNEY.

APPENDIX.

From the Richmond Enquirer, of December 15, 1818.

ARBUTHNOT AND AMBRISTER.

The case of these men begins to be agitated in almost every shape before the American people. It is introduced into the hall of Congress. It is canvassed in almost every private circle; and the discussion begins again to *creep* into the newspapers.—Under these circumstances, we come forward, respectfully, but fairly, to throw our mite into the public discussion.—Though we were not among the last to review the transactions of the Seminole war; though among the first to condemn the capture of the Spanish posts by Major General Jackson, and to urge their restitution; though for several months the public prints of this country and of England have rung with the melancholy cases of these two Englishmen; yet upon this point we thought it our duty to hold back. So much depended upon facts; and on a case where sensibility was so apt to be enlisted, there was such a scope allowed for the imagination, that we deemed it our duty to wait for *facts*. These facts are now before us. The documents disclose every material circumstance of this interesting affair. *We must speak out.*

We confess, however, that we touch this question with no satisfaction. To many it appears a very abstruse one; and we acknowledge that one branch of it is not without its difficulties. But it is not that we are liable to err that we are reluctant to touch it; but it is because we are under the necessity of discussing a transaction over which the humanity of our country must weep, and reprehending the conduct of an officer who was near and dear to our bosoms, who saved New-Orleans from capture and his country from disgrace.—But

we are impelled to this discussion by considerations that are irresistible. We think it due to the character of our country to disclaim a transaction which may affect it in the eyes of foreign nations, and it is due to our own institutions to reprobate an obnoxious course on the part of a high military officer, which may be drawn into precedent by other commanders.

The documents before us prove that Arbuthnot was not hung as a *spy*, as had been commonly but erroneously imagined. The court martial themselves strike out from the second charge the words "*acting as a spy*"—and certainly with strict propriety, because the very letter which is *said* to have been written for the purpose "of detailing the advance of the army "under General Jackson, stating their force, probable move- "ments and intentions, to be communicated to Bowlegs, the "chief of the Suwany towns, for his government," was written from St. Marks, five days *before* they entered it; and by the 101st article of war, a *spy* is defined to be one (not a citizen) "lurking in or about the fortifications or encampments "of the armies of the United States."

The charges upon which they were found guilty were of a different description:

Arbuthnot was found guilty, 1st. of "exciting and stirring "up the Creek Indians to war against the United States and "her citizens, he being a subject of Great Britain, with whom "the United States are at peace:" 2dly. of "aiding, abetting "and comforting the enemy, supplying them with the means "of war."—Ambrister was found guilty, 1st. of "aiding, "abetting and comforting the enemy, and supplying them "with the means of war, he being a subject of Great Britain, "who are at peace with the United States, and lately an offi- "cer in the British colonial marines;" 2dly. "leading and "commanding the lower Creek Indians in carrying on a war "against the United States"—to the last of which charges he pleaded *guilty*, but urged *justification*.

We shall not go particularly through the mass of evidence before us; but it appears, that Arbuthnot did take a deep in-

terest in the concerns of the Creek Indians. He *did* persuade them, that the Americans were bound by the treaty of Ghent to give up the lands which the Indians had previously ceded to us; and that the Americans were guilty of further encroachments upon their soil. He did write, at the instance of the Indians, to the British minister, to the Governor of the Bahamas, to Nicholls, to the Spanish Governors at Havana and St. Augustine, in their behalf; complaining, in round terms of our aggressions; stating in some of these letters, the necessity of stationing a British agent in the Indian country to watch over the interests of the savages; as the war advanced, he attempted in some of these letters, to obtain arms, ammunition and a "respectable force" to aid the Indians; and on the back of the letter to Mr. Bagot, were entered the number of warriors whom the Indians could send into the field, and the quantity of powder, flints, rifles and tomahawks which they wanted. It does appear that in these ways, Arbuthnot, a specially authorised agent fired their minds, and thus wrought them up to deeds of barbarous warfare. But it does not appear, except from the repetition by a third person of the declarations of the Indians, (a species of evidence we suspect inadmissible in our courts) that he had directly "advised them to go to "war with the United States, if they did not surrender them "the lands which had been taken from them, and that the "British government would support them in it"—or that robberies on the United States settlements and "murders "committed on the Santilla river, were at his instigation." He did write to General Gaines, for King Hatchy, thus: "I "shall use force to stop any armed Americans from passing "my towns or my lands."—It would even seem, if his letter to Hambly is to be credited, that originally he had attempted to keep down their ferocity, and not act "the instigator of "theft and murder." It appears that on the 2d April, before our troops reached St. Marks, he writes to his son at Suwany, "the main drift of the Americans is to destroy the black po-"pulation of Suwany. Tell my friend Boleck (its military "chief) that it is throwing away his people to attempt to re-

"sist such a powerful force as will be down on Suwany. As "soon as the Suwany is destroyed, I expect the Americans "will be satisfied and retire." He did furnish the Indians with some ammunition, about ten kegs of powder, at Suwany, and perhaps that article at other times; but he wishes us to believe in his defence, that it was only to supply the Indians for hunting—though the presumption certainly is, to help them to carry on the war.—We conclude from this brief statement, that Arbuthnot's conduct was *calculated*, though it does not appear by strict legal evidence that it was *intended*, to hurry these fiery Indians into war; that he attempted to procure for them arms, ammunition and some troops, to defend them at last: and that he did himself furnish them with a small quantity of ammunition.

As to Ambrister's case it is stronger. It appears that he wore an uniform and sword; was busy in sending off a detachment to meet the American army—furnished the *negro* leaders in the Indian town with powder and lead, and "re- "commended to them the making of ball, &c. quickly." Indeed, he confesses that he had led the lower Creek Indians in carrying on a war against us; but pleads justification; the grounds of which do not appear.

These were abominable acts—they are such as every American must abhor.

For these acts, Arbuthnot ("being a subject of Great Bri- "tain, with whom the United States are at peace,") was sentenced to be hung, and *was* hung—Ambrister was first sentenced to be shot, but the court immediately reconsidered this sentence, and commuted the death for stripes and confinement "with a ball and chain to hard labour for twelve calendar "months." General Jackson, in his General Order "approves "the finding and first sentence of the court, and disapproves "the reconsideration of the sentence;" upon this extraordinary ground:

"It appears, from the evidence and pleading of the pri- "soner, that he did lead and command within the territory of "Spain (being a subject of Great Britain) the Indians in

" war against the United States, those nations being at peace. " It is an established principle of the laws of nations, that " any individual of a nation making war against the citizens " of any other nation, they being at peace, forfeits his allegi- " ance, and becomes an outlaw and pirate. This is the case " of Robert C. Ambrister, clearly shown by the evidence ad- " duced."

Upon which ground, he orders Ambrister to be shot, and he *was* shot: Both prisoners being hurried off, in a few hours, to execution.

These are the *facts;* and now for the *principle.*

This unfortunate General Order passes over the only *plausible* ground, on which he could have rested the measure—and takes one, which principle, the practice of all civilized nations, and especially of our own, directly condemns:

His ground is, that the subject or citizen of a neutral nation, who engages in war, is to be considered, by the opposite belligerent, as " an outlaw and pirate." In what code of national law is this absurd principle, so absurdly characterized as an " established" one, to be met with?—The practice of all Christendom is opposed to this *savage* doctrine. But, bring the case home to ourselves. Our own revolution, which the mother country chose to call a rebellion, an *illegal war* on our part. Did *she* execute, on *this* principle, one German or one Frenchman, who fell into her hands by capture?—Or did *we* execute one of the Hessian prisoners who fell into our hands; with all our prejudices against those cold-blooded hirelings, who were sent hither to fight in a quarrel in which their country was in no degree interested? No, no; if this doctrine be true, let us write upon the tomb of De Kalb, " Here lies an outlaw and a pirate!" Let us throw our histories in the flames, and write new ones, in which Kosciusko and La Fayette shall be painted in their true colours of " outlaws and pirates!"

But the only *plausible* ground, on which we have heard these executions, excused or palliated, is this: That, it is true, by the rules of war, " we cannot with justice take the life"

of "an enemy submitting and delivering his arms;" but there is this exception, that nations who observe no rules of war have no claims to expect it from others. Vattel thus lays down the rule, Book III. chap. 8, sec. 141.

"There is, however, one case, where life may be denied an "enemy, who surrenders, and also capitulation refused to a "place. This is when the enemy has been guilty of some "enormous breach of the law of nations, and particularly if "it be at the same time a violation of the laws of war. This "denial of quarter is no natural consequence of the war, but "the punishment of his crime; a punishment, which the in-"jured party has a right to inflict; but for this penalty to be "just, it must fall on the guilty. When the war is with a "savage nation, which observes no rules, and never gives "quarter, it may be chastised in the persons of *any* seized or "taken, they are among the guilty, that by this rigour they "may be brought to conform to the laws of humanity.—*But* "*wherever severity is not absolutely necessary, clemency is to be* "*used.*"

The friends of the measure add, that these men, who instigated and aided the Indians, are no better than they are; nay, worse; and that "under the name of *enemies*, are compre-"hended, not only the *first authors* of the war, but likewise "all who *join* him, and fight for his cause." Vattel, Book III. chap. 8, sec. 139.

And now, what they ask, was the character of our enemy? They observe scarcely one of the rules of war. They murder men who are not in arms as well as those who are. They indiscriminately butcher men, women, and children. During this very campaign, the tomahawk has drunk the blood of our peaceful countrymen. Wretches! they take no prisoners. "In "the council houses of Kenhagees town, the King of the Mic-"kasukians, more than fifty *fresh* scalps were found, and, in "the centre of the public square, the Old Red Sticks' Stand-"ard, a *red pole*, was erected, crowned with the scalps, re-"cognized by the hair as torn from the heads of the unfortu-"nate companions of Scott."

But admit all this, as laid down by Vattel; say that he claims the right not only of refusing quarter to a savage enemy, but of killing him, when taken prisoner, *in cold blood*, yet even this does not justify the execution of Arbuthnot and Ambrister. You cannot separate the rule from the *condition*. "Wherever severity is not *absolutely necessary*, clemency is to "be used." "There may be (says Burlamaqui) cases *of ne-* "*cessity so pressing*, that the care of our own preservation "obliges us to proceed to extremities, which in any other "circumstances than these would be absolutely criminal." "When our safety is incompatible with that of an enemy "though subdued, (says Vattel, sec. 151) it is out of all "question, but that in cool blood a great number of prisoners "should be put to death. But it is required, 1. That they "were not promised their lives. 2. It must be well weighed "*even to a certainty, that our safety evidently demands such a* "*sacrifice*. If prudence will in *any* wise permit, either to trust "to their parole, or to disregard their perfidiousness, a gener- "ous enemy will rather listen to the voice of humanity, than "to that of a timorous circumspection." "It is only the "*great necessity* which can justify so terrible an execution, "(as that of Henry V. at the battle of Agincourt) and the "General whose case requires it, is greatly to be pitied." In speaking of other hard cases, such as the pillage and destruction of towns, Vattel says, that "only enormous offences are "to be punished in this manner; and when rigour is not of "an absolute necessity, it is always beautiful to listen to the "voice of humanity and clemency."

And now, with these requisitions staring us in the face, can we *coolly* lay our hands upon our hearts, and say, this was a case of that *absolute* and *pressing* necessity as would justify a departure from all the rules of humanity, and the uniform practice of our own country? To answer this question, look at the state of things at that very moment. The order for holding the court martial bears date the 26th April. Arbuthnot was sentenced on the 27th—Ambrister on the 28th—and they were executed on the 29th. On the 20th of April (five

days *before* the ordering of the court martial) General Jackson thus writes to the Secretary at War:

"I believe I may say that the destruction of this place, "(Bowlegs' town) with the possession of St. Marks, having, "on the night of the 18th, captured the late Lieutenant Am- "brister, of the British marine corps, and, as represented by "Arbuthnot, successor to Woodbine, *will end the Indian war "for the present; and, should it be renewed, the position taken, "which ought to be held, will enable a small party to put it "down promptly.*"

On the 26th—the date of the order, he writes thus:

"I shall leave this in two or three days for Fort Gadsden, "and after making all necessary arrangements for the securi- "ty of the positions occupied, and detaching a force to scour "the country west of the Appalachicola, I shall proceed di- "rect for Nashville: my presence in this country can be no "longer necessary. The Indian forces have been divided and "scattered, cut off from all communication with those unprin- "cipled agents of foreign nations, who have deluded them to "their ruin: *they have not the power, if the will remain, of "again annoying our frontier.*"

The war *ended* for the present—or if renewed, a small party enabled to *put it down promptly*—the Indians *scattered* and divided—without the *power of again annoying our frontier*—we demand, whence the danger of sparing the lives of these two men? where is this *pressing necessity* of shedding their blood, and staining our annals?

If you say, that it was necessary to give a tremendous example of vengeance, to deter other agents from mingling in future wars, then do we deny the justice of this distant and contingent calculation—and we ask you, to estimate the excuses to which this principle would lead. If we are to hold up these tremendous examples *in terrorem* for futurity, why not wage a war of extermination? why not sweep every man, and woman, and child, bearing the Seminole name, from the face of Florida? why "capture 6 men and 97 women and "children" on the 12th of April? why spare them on other

occasions? Why did not General Jackson put every one of them to the sword?

As to *these* two Englishmen, their power to injure us was gone. They were in our hands; cut off from all communication with the Indians; there was no pressing necessity to take their lives. Why not keep them in confinement, until the war was formally closed? why not punish them in some other way, than by *death?*

But if General Jackson had the right, and all the proceedings perfectly regular, why this indecent haste in executing these miserable men?—why not refer this case, the first we recollect to have ever occurred in our country; a case of such sensibility; to the Chief Magistrate of this nation? There was another reason for it: The 65th article of the rules and articles of war (act of Congress April 10, 1806) declares expressly, that "neither shall any sentence of a general court martial in time of peace, extending to the loss of life, be carried "into execution, until after the whole proceedings shall have "been transmitted to the Secretary of War to be laid before "the President of the United States, for his confirmation or "disapproval, and orders in the case." An army always carries the articles of war, for its government, *with it*, no matter to what country or continent it may go. Now, as the war waged by General Jackson was a war *de facto*, and not such a *constitutional* war, as was most probably contemplated by the act of Congress: Would it not have been proper to have *waited* for the President's instructions?

There is another, and most important, feature in these transactions, which cannot be overlooked. Ambrister was executed in the very teeth of the true sentence of the court martial. The universal, and heretofore the uniform practice of general officers in respect to all sentences of courts martial in cases, in which they have a right to approve or disapprove, is this: If he *disapproves*, the sentence is sent back to the court for *revision*, together with the General's reasons for disapproving. If the court adhere to its last sentence, *that* and no other can be executed. The General may, to be sure,

pardon or remit altogether; but who will justify a person, who holds the prerogative of mercy, executing an act of vengeance tenfold greater than what was decreed by the court or the jury?

This is with a vengeance what Shakspeare calls "a devil-"ish mercy in the Judge."

Should any one doubt the practice on these occasions, we refer to the following extract from (Gen.) Macomb's "Martial "Law:"

"As no sentence of a general court martial is complete un-"til it has received the approbation of the President of the "United States, or the commander in chief to whom that "power has been specially delegated, the President or such "commander, disapproving of the sentence, may order the "court to reconsider or review their proceedings, and recom-"mend to them an alteration of their judgment; but as it is "not consistent with the Executive powers, under the Con-"stitution of the United States, actually to exercise any judi-"cial authority, which belongs alone to the courts of justice; "so the President can neither himself make any alteration "in the sentence of such courts, nor commit that power to "any other: all, therefore, that it is competent for the Presi-"dent of the United States to do, if the sentence of a court "martial shall not meet his approbation, is to order the court "to review their proceedings.

"The President of the United States has the power of par-"doning or remitting the sentences of courts martial. This "branch of the Presidential prerogative is founded upon the "principle, that as the President represents the body of the "public, and possesses by delegation all its powers and rights "with regard to the execution of the laws, all breaches against "the public law are considered as offences against the people, "and therefore to the President as their representative, it be-"longs of right to *pardon* offences against the public: and as "it is not competent for any court by its own authority to "dispense with the rigour of positive laws, however strongly "the particular circumstances of a case may plead for such

" dispensation; so it is of the utmost consequence for the ends " of justice, that an equitable power of this kind should be " lodged with the Chief Magistrate, from whose hands it is " likely to be issued with the least hazard or suspicion of " partial or impure motives."

In fact, view the case of Ambrister as we will, it is impossible for us to regard it in any other light than as an unnecessary, wanton and unprecedented transaction, for which General Jackson in particular ought to answer to the constituted authorities of *this* country.

THE END.

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